THE INDIAN
WORKMEN'S COMPENSATION ACT

(VIII of 1923)

A COMMENTARY

BY

A. G. CLOW

M.A., C.S.I., C.I.E.,

Indian Civil Service.

THIRD EDITION

LAHORE

CIVIL & MILITARY GAZETTE PRESS

1936

First Edition—1923
Second Edition—1924
Third Edition—1936

PRINTED AND PUBLISHED AT THE CIVIL AND MILITARY GAZETTE, LTD.
THE MALL, LAHORE, BY E. G. TILT (MANAGER).

1936.

CONTENTS.

PREFACE.

The extensive changes made in the law in recent years have rendered necessary a complete revision and a considerable expansion of this book, and most of the commentary now offered is new. The opportunity has been taken to include those portions of the Code of Civil Procedure which are applicable to workmen's compensation proceedings, and to give the provincial rules in much greater detail than before. For permission to reproduce the latter, the author is indebted to the Governments concerned.

In view of the author's official connection with the subject of this book, it should be clearly understood that the statements made in it represent his personal views, and have no official authority of any kind.

INDIAN WORKMEN'S COMPENSATION

CHAPTER I

INTRODUCTORY

General Principles

1 BEFORE entering on the discussion of the Indian Act a few observations are offered on the general principles of workmen's compensation law. Although it forms a branch of civil law, its underlying conceptions differ from those which are familiar in other branches of that law.

2. THE main conception underlying all workmen's compensation laws is that of social insurance. Most forms of employment involve some risk to limb or life, and workmen and their families are given by the law insurance against the financial effects of accidents. Unlike other forms of social insurance, this involves no contributions from the workmen: the cost of insurance is thrown on their employers. The employer may act as his own insurer, *i.e.*, he may carry the risk himself by failing to insure his claim, or he may pass on the risk by means of insurance. In some countries he is obliged to insure himself either with insurance companies or the state; and it is in theory undesirable that there should be the possibility of default in meeting the workman's claim owing to the financial difficulties of the employer. But whether the risk is borne directly by the employer or whether he passes it on by paying a regular premium, any extra cost devolves in theory on the consumers of the goods produced by adding a small amount to the cost of the production of these goods. But if the financial as well as the bodily risks had to be borne entirely by the workmen, there would be a tendency for this to be reflected in wages where the risks are appreciable. Consequently the application of compensation need not result in any enhancement of cost, and may represent a spreading of liability on the workmen themselves.

3. WORKMEN'S compensation is thus not a matter of damages for injury. The employer who has to pay may be in no way to blame for the accident, and even in those cases (which form the minority) where he has contributed to it, the fact that he has been negligent is ordinarily immaterial. "The right given is no remedy for negligence on the part of an employer, but is rather in the nature of an insurance of the workman against certain sorts of accident."* Negligence on the part of the workman is, as a rule, equally immaterial. Even where this has been the sole cause of the accident, the claim ordinarily stands good; although the Indian Act, like most other Acts, excludes some accidents due to the serious fault of the workman. Still less does workmen's compensation involve any idea of penalty. The fact that accidents to workmen involve payments by employers tends to encourage efforts on the part of the latter to prevent accidents: this is an additional benefit which the community gains from the law, but is not its primary aim.

4. ONE further distinctive feature of most workmen's compensation laws may be noted. Workmen's compensation involves the creation of a civil right, enforcible by a duly appointed authority when necessary. But in India and in many other countries having Workmen's Compensation Acts, it is misleading to think of the parties and the Commissioner as occupying the same positions as the plaintiff and defendant and the Court in a civil suit. It is not an accident that the words "plaintiff" and "defendant" are nowhere used in the Act or rules, and that the word Court appears in the Act only where it refers to an authority other than the Commissioner, as in sections 18 A (2) and 19 (2), or where the Commissioner is expressly given the powers of a Civil Court as in section 23. The position of the Commissioner is discussed in a later chapter. But the essential difference from the ordinary relations of civil procedure is that the State leaves less to the discretion of the parties and assumes a greater responsibility for seeing that justice is done. There is here not the mere judicial adjudication between conflicting claims; there is also present in some degree the executive conception of a will residing in authority to make effective the benefit which the law confers. This may be traced, for example, in those provisions which prevent "contracting out," in the powers of initiation vested in the Commissioner, in the wide discretion he has in certain matters and in his general responsibilities.

*Per Viscount Haldane: Upton *v.* G.C.Ry. (1924) A.C. 302, XVI B.W.C.C. at p. 272.

Development of Indian Law

5. The original Indian Act (Act VIII of 1923) was based on a scheme prepared by a Committee which sat in 1922, and which reviewed the opinions received in response to a circular issued by the Government of India. In introducing the original Bill in the Legislative Assembly, Sir Charles Innes said, "What we have tried to do is to frame a Bill under which men without any expert legal knowledge, the employer and his workman, will be able to see for themselves whether in any particular case compensation is due, and, if so, what the compensation amounts to." The aim throughout was to leave as little scope for litigation as possible and, in consequence, the Indian Act is markedly rigid in character. In this and in some other respects it tends to follow American models rather than the British law, from which a considerable amount of its phraseology was borrowed. It has formed the model for legislation on workmen's compensation in Malaya, Ceylon and elsewhere.

6. Act VIII of 1923 came into force on 1st July, 1924. It still forms the basis of the Indian law, but it has been substantially amended at later dates. Minor corrections and changes were made by Acts VII of 1924, XXXVII of 1925 and XXIX of 1926. Somewhat larger changes were made by Act V of 1929, which enlarged the categories of workmen, removed a restriction on compensation in the building trades, altered the provisions relating to the distribution of compensation and made a number of other amendments.

7. Much greater changes were made by Act XV of 1933 which represented a general revision of the law on the lines recommended by the Royal Commission on Labour in India in 1931. The structure and general features of the Act were unaffected, but six new sections* were added, fourteen of the existing sections were amended and three of the Schedules were enlarged or radically altered. The number of workmen included was greatly enlarged, the scales of compensation were increased and the "waiting period" reduced. The other more important changes included alterations in the definition of "dependant," the abrogation of the exceptions to clause 3 (1) for fatal accidents, a great simplification in the provisions for calculating compensation, the relaxation of the law in respect of notice by workmen, the grant to the Commissioner of certain powers of initiative in fatal accidents and alterations in procedure in such accidents.

*Sections 10-A, 10-B, 18-A, 22-A, 30-A and 35.

Application of Act

8. ACT XV of 1933 came into force on 1st January 1934; but the changes which became effective on that date were mainly those relating to procedure. Those amendments which

(*a*) affected the amount of compensation, whether by altering the scales or the waiting period, or the method of calculation,

(*b*) had the effect of altering the categories of workmen and dependants, and

(*c*) altered the conditions governing the grant of compensation, *e.g.*, by abrogating the exceptions, or enlarging the list of diseases,

apply only in the case of accidents occurring on or after 1st July 1934. The Act, as printed in this volume, represents the law as it now stands,† with all the amendments made by the 1933 Act and earlier Acts, and the discussion in the commentary relates to the Act in this form. If a question arises regarding the compensation for an accident which occurred prior to 1st January 1934, reference should be made to the Act as it stood before any of the amendments made by the 1933 Act. If a question arises regarding compensation for an accident which occurred in the first six months of 1934, sections 2, 3, 4 and 5 and Schedules II, III and IV must be read as they stood prior to the 1933 amendments, and the rest of the Act applies as it now stands.

9. THE Act applies to the whole of British India [Section 1 (2)]. Its operation has also been extended to Berar, to the Civil and Military Station of Bangalore and to certain railway lands within Indian States. In all these areas, the Act applies in the same form as in British India, *i.e.*, the subsequent amending Acts are also in force.

† February 1936.

CHAPTER II

WORKMEN

10. THE Act is an Act for the payment of compensation to certain workmen and the first question which arises is therefore—what workmen come under its provisions? The relevant provisions are section 2 (1) (*n*), Schedule II and section 2 (3). The following paragraphs discuss in turn the various classes of workmen who are covered by or under these provisions. It is scarcely necessary to point out that the expression *workman* includes a woman. See section 13 (1) of the General Clauses Act and section (2) (1) (*d*) of this Act, which refers to the husband of a workman. Children are also included; special provisions govern the amounts of compensation to be given to them.

Railways

11. THE important provisions governing railway employees are sub-section 2 (1) (*n*) (*i*) and clause (*xii*) of Schedule II. Of these, the former relates to railway workers who are employed directly and the latter to those who serve under railway contractors or sub-contractors. Both clauses refer to the Indian Railways Act, 1890; the important provisions of that Act for the present purpose are the following:—

3 (4) '"railway" means a railway, or any portion of a railway, for the public carriage of passengers, animal or goods, and includes

(*a*) all land within the fences or other boundary-marks indicating the land appurtenant to a railway;

(*b*) all lines of rails, sidings, or branches worked over for the purposes of, or in connection with, a railway;

(*c*) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, and other works constructed for the purposes of, or in connection with, a railway; and

(*d*) all ferries, ships, boats, and rafts which are used on inland water for the purposes of the traffic of a railway, and belong to or are hired or worked by, the authority administering the railway: '

3 (7) '"railway servant" means any person employed by a railway administration in connection with the service of a railway: '

148 (1) 'For the purposes of section 3, clauses (5), (6) and (7), and'.....(a number of other sections)....."the word "railway," whether it occurs alone or as a prefix to another word, has reference to a railway or portion of a railway under construction and to a railway or portion of a railway not used for the public carriage of passengers, animals or goods as well as to a railway falling within the definition of that word in section 3, clause (4).'

A comparison of these provisions with the provisions of the Workmen's Compensation Act shows that, subject to the exceptions noted in paragraphs 12 to 15 below, all railway employees are workmen, including those employed on services which are ancillary to the railway and those employed on lines under construction. No distinction is made between light railways and other railways.

12. FOUR classes of railway servants are excluded from the definition of workman by express provisions. The first class consists of persons "whose employment is of a casual nature and who are employed otherwise than for the purpose of the employer's trade or business." In view of the definition of "railway servant" given above, this exception has little practical importance so far as those employed directly under a railway administration are concerned. Such workers, even if employed on work of a casual nature, are practically all employed for the purposes of the business of the railway, and so the exception will not exclude them. It may operate to exclude a few men employed under railway contractors. The general meaning of the exception is discussed in paragraphs 52 to 55.

13. THE second exception excludes those persons who are "permanently employed in any administrative, district or sub-divisional office of a railway." For example, orderlies attached to the office of the Traffic Manager at headquarters, and clerks working in an Assistant Engineer's office are excluded by this provision. But a confidential clerk or an orderly whose duties involved his accompanying an officer on his tours from time to time would not come within this exception, even though he

happened to be working in the headquarters office when an accident overtook him.

14. THE third class excluded consists of some, but by no means all, of those employed on railways who are in receipt of more than Rs. 300/- a month. This exception governs all persons included in Schedule II: and section 2 (1) (*n*) (*i*) excludes from the definition of railway servant all persons "employed in any such capacity as is specified in Schedule II." It follows therefore that persons employed under contractors on railways are covered only if their monthly wages do not exceed Rs. 300/- and the same limitation applies to any railway workers who come within any of the items in Schedule II. Thus if they get more than Rs. 300/- a month, persons employed in railway workshops are excluded because they come within clause (*ii*) of Schedule II. The same monetary limit applies to persons employed in railway collieries, because they come within clause (*v*) of Schedule II, and to railway electricians, because they come within clause (*xix*) and so on. On the other hand a stationmaster getting Rs. 400/- a month is a workman, because he is not included in Schedule II. For a discussion of the method of calculating wages, see paragraphs 164 to 173.

15. THE last exception is that which excludes persons "working in the capacity of" members of "His Majesty's naval, military or air forces or of the Royal Indian Marine Service." If, during an emergency, regular soldiers or members of the Auxiliary or Territorial Forces are ordered to assist in running the trains, they will not be covered by the Act. But the fact that a regular engine-driver is a member of the Auxiliary Force does not exclude him from the Act while he is doing his ordinary work, for he does not drive the engine in his capacity as a member of the Force.

Schedule II: General Observations

16. BEFORE passing to the detailed consideration of the remaining classes of workmen who are specified in Schedule II, certain general observations may be offered on the items of that Schedule. In the first place, although ordinarily inclusion in any item is sufficient to constitute an employee a workman for the purposes of the Act, all the groups included in the Schedule must be read as subject to the three general exceptions discussed in paragraphs 52 to 58 below. Each of these operates to exclude from the benefits of compensation a certain number of persons who come within the Schedule.

17. AGAIN, it should be noticed that, except in clause (*xii*), which has already been considered, and in clause (*xiii*), which relates to a branch of Government service, there is no reference to the employer. Workmen are defined in most cases with reference to their occupation, and in some cases with reference to the premises in which they are employed. In consequence, it does not matter for the purposes of his inclusion in the Act, in any case other than that of a railway worker or a postal servant, whether the workman is employed by a contractor or sub-contractor working under an employer, or by the principal employer directly. The special provisions relating to the liability of contractors are discussed later; see paragraphs 64 to 76. It is sufficient to note here that the workman has in most cases a right to claim from the principal employer.

18. CLAUSES (*ii*), (*iii*), (*iv*), (*v*), (*xvi*) and (*xviii*) of Schedule II contain references to the numbers of persons employed in various establishments in the preceding twelve months. By virtue of the Explanation at the end of the Schedule, this period is to be understood as meaning the twelve months ending with, and thus including, the day on which the accident occurred. The test of numbers, moreover, in all these cases need only be satisfied in respect of a single day during the whole of that period. A further point to be noticed in respect of these numerical tests is that, in applying them, the exceptions to the definition of workman, discussed in paragraphs 52 to 58 below, have no relevance. In many cases, for example, the members of the supervising staff are covered by the clauses of Schedule II, and if so the fact that they may be getting more than Rs. 300 a month will not warrant their exclusion from the calculation of the numbers employed, although it will operate to exclude them from rights to compensation. Thus there may be cases where the test of numbers is satisfied, although the actual number of "workmen" is less than the number specified in the clause in question.

19. CLAUSES (*i*), (*ii*), (*x*), (*xiv*), (*xviii*) and (*xix*) exclude from the definition of workman persons belonging to the categories covered by these items but employed "in a clerical capacity." This is in pursuance of the main object of the Act, which is to provide for workmen. The phrase should be strictly interpreted with regard to the work on which the employee was engaged at the time of the accident; the fact that a man ordinarily works as a clerk will not exclude him if he is injured while working temporarily in another capacity. Thus a tramway clerk sent

out as an inspector ceases to be employed in a clerical capacity for the time being, and a factory clerk engaged in the supervision of manufacture is not excluded while so working.

Tramways, Motors, etc.

20. THE first clause of Schedule II includes persons employed "in connection with the operation or maintenance of mechanically propelled vehicles." The phrase "mechanically propelled vehicles" is not free from ambiguity. If this clause stood alone, "mechanically propelled" would certainly be taken as covering all forms of propulsion other than human or animal agency, for this is its ordinary connotation. But an element of doubt is introduced by the wording of clause (*vi*) (*a*) which draws a distinction between ships propelled by steam, water or other "mechanical powers" and those propelled by electricity. [See also clause (*ii*)]. This could be used to support the plea that electricity is not a form of mechanical power, and that consequently vehicles propelled by electricity, such as electric trams, are not "mechanically propelled." But there is no reference to power in clause (*i*), and in view of this it seems preferable to read the words "mechanically propelled" in their ordinary connotation, as given above. Having regard to the ambiguity, it is relevant to observe that the original clause (*i*), for which this clause was substituted by the amending Act of 1932, referred specifically to tramways, and as the whole tendency of the changes made in the Schedule in 1932 was in the direction of enlargement, the legislature presumably had no intention of excluding the most hazardous type of tramway work. Work in connection with horse trams would appear, however, to be excluded. On the view suggested above bicycles are excluded.

21. THERE is no dubiety about the inclusion of vehicles propelled by steam, petrol or oil engines. All motor vehicles are thus included, and private chauffeurs as well as commercial drivers are therefore workmen. The word "vehicle" is not defined; its ordinary meaning includes contrivances designed for the carriage of passengers or goods on land, but excludes contrivances operating on water; a boat is not a vehicle. The only doubtful case is that of aircraft. Probably æroplanes would be treated as vehicles, but not seaplanes which are incapable of moving under their own power on land. The phrase "in connection with" is an extremely wide one and covers, for example, the whole of the staff maintained for working or keeping in order steam

road-rollers and the whole of the staff employed for repairing motor cars or keeping them in running order in a repairing shop or garage.

22. CLERICAL employees and persons employed "on a railway" are excluded. "Railway" is not defined here as it is in clause (*xii*), and must therefore be read as having its ordinary meaning and not the very wide technical meaning given to it in the Railways Act. It means more than the actual rails, and is probably to be regarded as including the railway lines together with the adjuncts required for their operation, such as stations, signal-boxes, etc. On this view the employees in a motor bus service maintained by a railway administration are not excluded by the words "otherwise than..on a railway" and come within the scope of clause (*i*). In view of what is stated in paragraph 14 the question of whether such workers come under this clause or not affects them only if they are getting more than Rs. 300/- a month.

Factories and Workshops

23. CLAUSES (*ii*) to (*iv*) of Schedule II relate to employees engaged in various forms of manufacturing activity. Clause (*ii*) covers the factories using power plant and clause (*iii*) the workshops in which no power is used, while clause (*iv*) covers persons manufacturing explosives.

24. CLAUSE (*ii*) is somewhat involved in construction, but it should be read as if the letters (*a*) and (*b*) were inserted after "whereof" and "and." In other words the phrase beginning with "in any kind of work" must be read as attached to the second "employed" and not to the first "employed." That this is the correct reading is evident from the fact that on the alternative reading the concluding phrase relating to steam, water, etc., would not make proper sense. There are thus four conditions to be satisfied to bring an employee within this item, namely:—

(1) A manufacturing process must have been carried on in the establishment;

(2) Power must be used somewhere in the establishment;

(3) The number of persons employed in the processes or in some form of connected work must have exceeded ten;

(4) The employee must have been engaged somewhere in the premises or their precincts. These conditions are discussed in turn in the following paragraphs.

25. "MANUFACTURING PROCESS" is defined in terms of section 2 (4) of the Factories Act, which reads as follows:—

> "'manufacturing process' means any process for or incidental to—
>
> (*a*) making, altering, repairing, ornamenting, finishing, or otherwise adapting for use, transport or sale, any article, or part of an article, or
>
> (*b*) refining oil or pumping or filtering water, or
>
> (*c*) supplying, generating or transforming pneumatic, hydraulic or electrical energy,
>
> and includes the baling of any material for transport."

This is in very wide terms and includes practically every form of industrial activity that can be carried on in fixed premises.

26. PASSING to the second condition, it is sufficient if power is used anywhere on the premises. The definition of power may be regarded as including all forms of the supply of energy except human and animal agency. The words "on any day of the preceding twelve months" do not govern the use of power, and the criterion is therefore whether power was used or not used at the time of the accident. But the word "used" should not be interpreted so strictly as to exclude a workman injured at a moment when the machinery had temporarily stopped. It would seem to be sufficient if the use of power had not been definitely discontinued before the time of the accident. The test, on this view, is not—was power used at the moment of the accident? It is—At the time of the accident were the premises ones in which power was installed and ordinarily used? It should be added that the power need not be used to work machinery; it is sufficient if it is used for any purpose.

27. THE third condition is that of the numbers employed. At least ten persons must have been employed at some time in the preceding twelve months (see paragraph 18 above). They must have been employed either in a manufacturing process as defined above, or "in any other kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made." These words are taken, with minor changes, from section 2 (2) (*d*) of the Indian Factories Act, 1911, which was taken in turn from the British Factory and Workshop Act, 1901, and are not easy to interpret. But they should probably be taken as covering only work which contributes in some more or less direct way to the sequence of events which takes place in a

factory from the time the raw material is first handled until the goods produced are ready for delivery. On this interpretation, clerks, employed purely on the accounts and correspondence are excluded ;* their work has not a direct relation either with the processes or with the articles. The same is true of doorkeepers, watchmen and persons employed purely for keeping the premises clean. But the supervising staff are directly in touch with the processes ; and the engine-room staff are equally connected, for without them the essential processes would have to stop. Similarly those who carry the raw material to a machine, or who pack the finished product are doing work connected with the article which is the subject of the process and with the article made respectively.

28. In connection with the fourth condition, the important point to notice is that the actual occupation on which the employee is engaged is quite immaterial. All that matters is that he should be employed in some capacity within the premises or their precincts. Thus a watchman and a sweeper, although they do not count for making up the 10 persons necessary, count as "workmen" once the condition of there having been 10 persons is satisfied. The whole of the factory employees, on whatever work they are engaged are workmen if the other three conditions are satisfied. The only persons excluded are those employed in a clerical capacity. (See paragraph 19).

29. Clauses (*iii*) and (*iv*) are simpler. The former covers the larger workshops in which power is not employed. The limit of persons is placed at 50, they must be employed "for the purpose of" any one of various specified processes and if so employed, they are "workmen." The list of these processes is taken from clause (*a*) of the definition of manufacturing process given in paragraph 25 above. To be employed *for the purpose of* carrying on certain work is not, of course, the same as to be employed *in* carrying on that work. It is a much wider term and includes all who have been engaged with the object of enabling the work to be carried on. It should probably be regarded, therefore, as including the whole of the staff of the workshop.

30. In the case of establishments manufacturing or handling explosives, such as fireworks makers' shops or places making or dealing in ammunition, the number is reduced to 10. Handling counts equally with manufacture, but the employees must be

*They are not excluded by the words "otherwise than in a clerical capacity," or these words have no application in this connection.

engaged *in* and not merely for the purpose of, the manufacture or handling. This narrower phrase, however, would probably be held to cover the supervising staff in a manufacturing establishment.

Mines, Excavations and Oilfields

31. CLAUSE (*v*) of Schedule II covers employees in mines and refers to section 3 (*f*) of the Indian Mines Act, which reads as follows :—

> '"Mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to or belonging to a mine :
>
> Provided that it shall not include any part of such premises on which a manufacturing process is being carried on unless such process is a process for coke making or the dressing of minerals.'

This is obviously an extremely wide definition, and covers everything in the way of excavating for minerals from a man digging for *kankar* upwards. It includes quarries as well as underground mines.

But the proviso to clause (*v*) excludes the less important excavations by requiring one of three conditions, namely :—

(1) more than 50 persons must have been employed on some day during the preceding 12 months ;

(2) explosives must have been used on some day during the preceding 12 months ;

(3) the depth of the excavation must exceed 20 feet.

These conditions need not all be satisfied; when any one of them is satisfied, the excavation ranks as a mine if it comes within the definition given in the preceding paragraph. In connection with the first condition, the number fifty must be made up of men employed "in the excavation," and the word excavation apparently excludes the "works, machinery, etc." referred to in the definition of mine, and includes only the actual workings, open or below ground, where work is going on.

32. ON the other hand, the definition of workman is not limited in this manner. In addition to the persons employed in the actual mining operations, everyone else who is employed below ground is covered, and persons engaged in "any kind of work...incidental to or connected with any mining operation or

with the mineral obtained" are also included. This last phrase must be interpreted in the same manner as the corresponding part of the factory definition (see paragraph 25). Some direct relation would appear to be necessary between the worker and the actual operations involved in extracting the mineral and transporting it to the stage where it is ready to be taken from the premises. Clerks are excluded here only if they are not working "below ground." These last words presumably cover only places which have ground vertically above them; they do not cover an open quarry below the level of the adjoining ground.

33. OTHER excavations are mentioned in clause (*xvi*) of Schedule II where the three conditions mentioned in paragraph 31 again appear. Here again only one of them need be satisfied. As dams, embankments, roads and various other forms of engineering activity come within clause (*viii*) probably the only important class of work included by virtue of clause (*xvi*) is the digging of wells. The last condition, which in such cases will usually be the important one, must be applied with reference to the depth of the excavation at the moment when the accident occurs, and not with reference to the depth which it was intended to reach. The object of the excavation is here immaterial whereas clause (*v*) applies only where the object is to secure minerals.

34. AN oil-well is a mine within the meaning of clause 3 (*f*) of the Mines Act, but work in oil-fields is covered by clause (*xiv*) of Schedule II which is wider in its terms than clause (*v*). All persons employed in connection with the operations are covered, with the exception of clerks (see paragraph 19), and the number employed is immaterial. Those employed in work on the pipe-lines are included in clause (*x*) and those employed in the refineries come under clause (*ii*).

Ships and Docks

35. CLAUSE (*vi*) of Schedule II covers the masters and seamen of certain ships. The definition includes all those ships which move under power, and any ship which is towed or is intended to be towed by a ship which moves under power. Other ships of 50 tons and over are also included. "Ship" has the meaning assigned to it by section 3 (51) of the General Clauses Act (X of 1897), which reads, "ship shall include every description of vessel used in navigation not exclusively propelled by oars." Sub-clause (*a*) of clause (*vi*) thus covers, in addition to steamers, all lighters, barges and "flats" which are intended to be towed

by a steamer, and sub-clause (*b*) covers sailing ships of the prescribed net tonnage. "Seaman" is defined in clause 2 (1) (*k*) as including every person forming part of the crew of any ship, other than the master; and masters are separately mentioned here. There is no mention of the place where the ship plies, so that crews on inland waters, on tidal waters and at sea are alike covered; but the Act does not extend beyond the territorial waters of British India. [Section 1 (2).]

36. INDIAN lascars recruited in India for service on the great majority of sea-going ships, and their dependants, are however entitled to compensation in accordance with the provisions of the Act, even when the accident occurs outside British India, and even though the ship is registered abroad. This right is not created by the Act itself, but by a stipulation in the Articles of Agreement entered into under the Indian Merchant Shipping Act (XXI of 1923). This stipulation gives by agreement to the lascars to whom it applies the same rights of compensation as workmen under the Act in respect of their employment under the agreement, and provides that, in the event of dispute, the dispute shall be settled by a Commissioner for Workmen's Compensation, whose decision is final. But proceedings before a Commissioner in pursuance of this agreement are of the nature of civil arbitration proceedings, and are not proceedings under the Workmen's Compensation Act. The right to compensation does not arise if the seaman has filed a claim for compensation under the law which is in force in the country in which the ship is registered. Thus lascars on ships registered in Great Britain, if governed by the stipulation, have a choice between recovering compensation under the British Act or invoking the stipulation to secure compensation in India on the Indian scale.

37. A FURTHER class of employees on vessels is specified in clause (*xvii*), which relates to ferry-boats. The test here is whether the ferry-boat is capable of carrying more than ten persons. If it is so capable, persons employed in its operation are workmen. "Capable" should be interpreted with reference to the number of persons the boat is designed to carry, and not with reference to the number of persons that a rash ferryman may happen to take. Persons employed on light-ships are included by clause (*xx*).

38. CLAUSE (*vii*) covers those whose work is connected with ships but who are not seamen, and is in two parts. The first part includes those who are "employed for the purpose of" various forms of activity connected with ships, such as shipbuilding and

shipbreaking, repairing, fuelling, painting and cleaning. This part of the clause refers also to those employed for the purpose of loading or unloading ships, but workers of this type appear again in the second part of the clause in much more comprehensive terms. Thus certain occupations, such as unloading goods from a ship, come under both parts of the clause. There is, however, an important difference between the two parts in respect of such occupations, for the second part relates to work done within specified geographical limits, namely the limits of ports subject to the Indian Ports Act, whereas the first part contains no express mention of place. But that part should be regarded as relating only to work done in juxtaposition to a ship. This is clear from the nature of the occupations. Thus "the work of loading does not begin until there is contact and collaboration between the cargo owners" servants in charge of the cargo on shore and the ship's crew or stevedores employed in their place and ready on board ship to receive the goods as they come over the ship's rail and stow them in the hold."* Unloading begins where loading ends, and the remaining occupations cannot possibly be conducted except in contact with a ship, or part of a ship. The first part of the clause, then applies wherever a ship may be, but in respect of loading and unloading it does not extend beyond the work done in transferring the goods from the ship to the shore (or to another ship); the second part applies only within port limits, but covers practically all movements of goods within these limits, whether a ship is present at the time or not.

39. THE most difficult words in the clause are possibly the words "for the purpose of" which, it will be observed, cover the occupations mentioned in the first part but not those mentioned in the second. They should not be regarded as intended to cover work done away from the ship;† but the fact that "for the purpose of" is used in the first part and "in" in the second part shows that a difference is intended; and the first phrase is distinctly wider than the second. It would, it is suggested, cover tally clerks, for example, and men employed in the hold of a ship to

*Per Coutts-Trotter, C. J. in Ralli Bros., Madras *v.* Perumal, 52 Mad. 747.

†Ralli Bros., Madras *v.* Perumal, and Parsu *v.* Trustees of Port of Bombay, 54 Bom. 114.

Caution is necessary in relying on these cases as this clause had not then the form it has now. Both the cases can be cited in support of the view that "for the purpose of" means no more than "in" and against the view stated in paragraph 39. But the clause did not put these words in contrast as it now does, and the issue before the Courts was whether the words "for the purpose of" covered work done in places which the word "in" would not cover.

repair the bags as a cargo of grain is being unloaded. The words "employed in the handling or transport" seem to imply more direct contact with the actual operation, but are probably wide enough to include the supervising staff.

Buildings, Public Works, etc.

40. CLAUSES (*viii*), (*ix*) and (*x*) cover a wide range of persons employed in the building trades and various kinds of public works and civil engineering activities. The definitions should not give much difficulty. In the case of buildings, the actual state reached does not matter; the criterion is the complete state of the building. Thus a building which is intended to have two storeys, but of which less than the first storey has been finished is included. So is a building which has been 20 feet high, but of which all but the last 5 feet have been demolished. Heights and storeys count from ground level, so that a building consisting of cellars and a ground floor structure 15 feethigh is not included, while a building 18 feet high on a plinth 3 feet high is included. In the case of dams and embankments, the same criteria are not applied; there it is the actual height reached that matters.

41. THE introductory words differ in the case of the three clauses. Clause (*viii*) includes only construction, repair and demolition; clause (*ix*) adds maintenance to these and clause (*x*) adds "working." Repainting, when this is necessary, is a form of 'repair'.* Maintaining, as distinct from repairing, would cover mere inspection work. "Working" covers the large number of persons employed in the operation of aerial ropeways, canals, etc. Clerical employees are excluded in clause (*x*), so that, for example, the revenue staff employed on an irrigation canal are not workmen. There is no similar exclusion in items (*viii*) and (*ix*) where the definitions are so framed as to exclude those not directly connected with the actual operations. In all three cases the staff supervising or directing the operations may be regarded as included.

Posts and Telegraphs

42. CLAUSE (*xiii*) of Schedule II includes a large number of employees of the Posts and Telegraphs Department. These are divided into two groups of which the first consists of those in specified occupations in the Railway Mail Service. The second group includes all those who are "employed in any occupation ordinarily involving outdoor work." It thus covers postmen, telegraph peons and persons engaged in similar occupations.

* N. H. Sidhwa *v.* Krishnabai, *Bombay Labour Gazette*, Jan. 1936, p. 335.

Such employees are covered whether they were working indoors or out-of-doors at the time of the accident; the test is whether the job in which they were working at that time ordinarily involved outdoor work. An occupation which regularly involves both indoor and outdoor work is an occupation "ordinarily involving outdoor work": it is not necessary that the occupation should involve nothing but outdoor work. But outdoor work is not the same thing as outdoor employment. Travel in the open air from place to place, such as is done by an inspector of village post offices may be outdoor employment but is not outdoor work.

43. THE definition of the employees in this instance by means of reference to a department of Government gives rise to a special position in respect of those who are engaged by contractors. Employees serving under postal contractors are ordinarily not employed in an occupation *in* the Department; they are not in the Department, in the accepted sense of the term. In consequence they do not come within this clause. But if they come under another clause of the Schedule, such as clause (*i*), as they frequently will, the Department will almost always be liable for compensation. This follows from the provisions discussed in paragraphs 64 to 70, to which reference should be made. Other employees of the Posts and Telegraphs Department are included by virtue of other clauses of the Schedule. Nearly the whole of the telegraph engineering staff, for example, comes under clause (*ix*).

Plantations

44. THE most important of the remaining classes of workmen is that included by clause (*xviii*) of Schedule II, which relates to plantations. Plantations are defined as estates "maintained for the purpose of growing cinchona, coffee, rubber or tea." There must have been 25 persons employed; see paragraph 18. With the exception of clerks (see paragraph 19), all persons employed on the estate are included.

45. "ESTATE" is not defined and it would be possible to read the words "employed....on any estate" as covering every one employed within the geographical limits of the plantation. But it is probably more correct to regard "employed" as having a closer connection with "estate" and to take the latter term as embodying the conception of organization as well as that of location. If this view is accepted, only those who are connected with the estate are included. Thus, to take an example, an assistant to a shopkeeper whose shop happens to be on the estate

is not included. In other words " employed on " has not the same meaning as " employed within the limits of." On the other hand, it should not be interpreted so narrowly as to exclude all who are not on the books of the estate. Had this been the intention, the clause would probably have read " employed for the purpose of growing....; " compare clauses (*iii*) and (*vii*). The phrase " employed....on any estate " appears to be wide enough to include all those having a connection with the estate, directly or indirectly, provided that their work lies there. Thus, for example, the domestic servants of a resident manager are probably included.

46. It may not invariably be easy to determine what constitutes one estate, although ordinarily the matter should admit of no doubt. If an area of land is to constitute a single estate, it must be under the same owner or group of owners, but common management is not essential. An owner does not divide an estate into two estates by entrusting part of it to one manager and part to another. On the other hand the mere fact of common ownership is not sufficient to make two pieces of land one estate, for one man or company can hold several estates. The safest test is to look to the title-deeds of the area. If it came into the owners' hands and into the hands of all their predecessors by a single transfer it will probably be regarded as a single estate. The whole area " maintained for the purpose of growing " any of the specified crops is part of the estate, including land that is under preparation or land kept for ancillary purposes, such as the rice lands allotted to plantation labourers or kept as reserves for firewood.

Miscellaneous Occupations

47. The remaining clauses of Schedule II add comparatively small groups to the list of workmen. Clause (*xi*) includes those employed in the service of fire brigades. Clause (*xv*) includes all those employed in any occupation involving blasting operations, but most of those who come under this clause are also covered by other clauses such as clauses (*v*), (*viii*) or (*xvi*). Clause (*xix*) relates to those employed in connection with electrical or gas undertakings. Nearly all those working in gas works or electric supply stations are already covered by clause (*ii*) ; but clause (*xix*) extends protection to those whose work lies outside the factories, such as electricians attending to transmission lines and installations, or employees of gas companies attending to pipes, etc. Clerks are excluded, but employees whose work is the opening and

reading of meters are not employed in a purely clerical capacity and are therefore workmen.

48. CLAUSE (*xx*) relates to lighthouse employees; "lighthouse" is to be interpreted as defined in section 2 (*f*) of the Indian Lighthouses Act, which reads:—

> "lighthouse" includes any light-vessel, fog-signal, buoy, beacon or other mark, sign or apparatus exhibited or used for the guidance of ships.

This adds little to the ordinary meaning of lighthouse for the present purpose, as men could hardly be employed in any of the structures mentioned except light-vessels, and most of these are outside territorial waters.

49. CLAUSE (*xxi*) covers persons employed in the cinematograph industry. Two categories are specified, those employed in the production of films intended for public exhibition and those employed in exhibiting such pictures. To be "employed in" certain work is not the same as to be "employed for the purpose of" that work; it implies a closer connection between the employee and the work. The first category includes actors, camera men, producers, etc., who participate in the making of the picture, but would not seem to cover those in incidental occupations, such as clerks. Similarly persons employed in the box-office of a cinema theatre would probably not be regarded as "employed in exhibiting" the pictures; the phrase seems to cover only those who are connected in some direct way with the actual exhibition of the pictures, either by directing the operations or by sharing in the mechanical work. Clause (*xxii*) of Schedule II, which covers persons employed in training, keeping or working elephants or wild animals, has been supplemented in respect of work with elephants, by the notification discussed in paragraph 51. Clause (*xxiii*) requires no comment.

Notified Occupations

50. SECTION 2 (3) empowers the Government of India to enlarge Schedule II by notifying, after previous notice, additional classes of persons employed in hazardous occupations. A number of classes were so notified under the sub-section as it stood prior to 1934 but these notifications have been withdrawn and the classes have been included in the present Schedule. Consequently the only effect of these notifications is to give protection in respect of certain workmen who met with accidents before 1st July 1934. They are not reproduced here. The power conferred by the proviso to Section 2 (3) has never been used.

51. THE only notification which has been issued since 1st July 1934 and which accordingly enlarges Schedule II is reproduced on page 175. It includes four occupations which are particularly associated with, but not confined to, forest work. The terms used to define the occupations are straightforward. Persons employed in a clerical capacity are excluded (see paragraph 19).

Excluded Workers

52. CERTAIN classes of workers, although falling within the categories discussed above, are excluded from the definition of "workman" by three exceptions contained in section 2 (1) (*n*), and in consequence are not entitled to claim compensation. The first exception is contained in the opening words of section 2 (1) (*n*), which exclude every "person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business." There are thus two conditions both of which must be satisfied* before this exception becomes operative. The worker must be engaged on casual work and he must also be employed otherwise than for the purpose of his employer's trade or business.

53. THE words in question were taken from British legislation and will be found in section 3 (2) (*b*) of the British Workmen's Compensation Act of 1925. In spite of the various British decisions it is not possible to give any exact definition of the term "casual nature." The question of whether work is of a casual nature is one of fact, to be decided on the circumstances of each case. Employment, to be casual, must be either short or intermittent, and there must be something uncertain, almost accidental, about it. It is fairly safe to describe "casual" as the reverse of "regular," and continuous employment is not casual, provided that the words "regular" and "continuous" are examined from the point of view of the person offering the employment and not from the point of view of the person undertaking it. By way of illustration, consider the case of a man whose job is to repair tiled roofs. He might do this work regularly and continuously, but if he did it for a series of employers, each of whom called him in only when he required his services, and without any understanding that that man had a claim to the work, the employment under each employer would be of a casual nature. On the other hand, if any particular person who employed him

Cf. Abdul Hossein *v.* Secretary of State for India, XI Ran. 433; Periyakkal *v.* Agent, S. I. Ry., LVIII Mad. 804.

had an arrangement that he should call and examine and repair the roof once every half year, that employment would not be casual, although it would not be continuous. Similarly, if the workman gave up working on his own account, and began to work under a master who gave him a regular wage and sent him out to work for those who required his services, such employment would not be casual, although the man might be doing exactly the same work as before.

54. BUT it is not sufficient to exclude a man to prove that his work is of a casual nature. He must be "employed otherwise than for the purposes of the employer's trade or business." This phrase again has been the subject of frequent decisions in England. It is obviously wider than the phrase "part of the trade or business" used in section 12. Mr. Parsons, K.C., suggests that the "real test of whether the employment is for the purposes of the trade or business is whether the employer entered into the contract of service in his capacity of tradesman or man of business, or in his capacity of private individual."* This test is in consonance with the reported decisions in Britain, and is not difficult to apply. [See also paragraphs 67-8.]

55. IN the light of the two conditions discussed in the preceding paragraphs, it is probable that the only common cases that will come under this exception in the present Act are cases of men brought in to do building work. Dock labourers, though most of them are typically persons employed on work of a casual nature, are nearly always employed for the purposes of their employer's trade or business. If a schoolmaster brings in men to repair the roof of his private house, such men will normally satisfy both the conditions given in paragraph 52 and will therefore be excluded. If a shopkeeper employs men on exactly similar work on his shop, such men satisfy the first condition but not the second, and are therefore "workmen" if they come within the Schedule. And if a schoolmaster engages men to work regularly on constructing a new house for himself, these men satisfy the second condition but not the first and therefore come within the Act if the house is to consist of more than one storey.

56. THE second exception is contained in the words "on monthly wages not exceeding three hundred rupees" in section 2 (1) (*n*) (*ii*). This operates to exclude the better paid men on the ground that "men of this type should be qualified, by their

*Parsons—The Workmen's Compensation Act, 1906.

-ducation and their means, to make provision for themselves."* It applies to all classes of workers except certain classes of railway employees (see paragraph 14). The method of calculating wages for the purpose of determining whether a man is on monthly wages of over Rs. 300/- or not is the same as the method of calculation for purposes of compensation [*cf.* sections 2 (1) (*m*) and 5], and is discussed in paragraphs 164 to 173.

57. THIS exception may also exclude a few others in addition to those in receipt of high wages, for it makes it necessary, in order that an employee should be a "workman," that he should be "employed on wages." In consequence, an apprentice who is serving for the purpose of getting a training without drawing any remuneration or getting any benefit "capable of being estimated in money" [section 2 (1) (*m*)] is not a workman. Schedule IV also makes it clear that compensation is only payable to workmen getting "more than Rs. 0/-." Apprentices who are remunerated are not excluded. The inclusion of an apprentice will thus depend on the nature of the contract he has made.† There is a reference to a contract of apprenticeship in section 2 (1) (*e*).

58. THE third exception excludes "persons working in the capacity of" members of "His Majesty's naval, military or air forces or of the Royal Indian Marine Service." This is based on the ground that the armed forces of the Crown "consent to serve on the understanding that they may be subjected to abnormal hazards, and separate provision is made for those who sustain injuries in the course of their duties."‡ The exception should give no difficulty in interpretation. An aircraftsman whose duty as such it is to attend to the repair of aeroplanes in an aeroplane factory, or an Army N.-C. O. sent to supervise in an Ordnance Factory would be excluded by this exception.

*Statement of Objects and Reasons appended to original Bill.
†*Cf.* Inder Singh *v.* Secretary of State in Council, 119 I. C. 722.
‡Statement of Objects and Reasons appended to original Bill.

CHAPTER III

EMPLOYERS' LIABILITIES

Employers

59. THE Act is described in the preamble as designed "to provide for the payment by certain classes of employers to their workmen of compensation." It could be described more appropriately as an Act to provide for the payment of compensation to certain classes of workmen by their employers, for it is the workmen who are classified. The classes of workmen have been discussed in the preceding chapter, and those who employ workmen falling in these classes are normally liable for the payment of compensation to them. In this chapter the main question examined will be the liabilities imposed by the Act on employers and on others concerned.

60. SECTION 3 (1) states that the "employer shall be liable to pay compensation" when compensation is due. "Employer," in the words of Mr. Beven, "means a person who proposes a contract of service, and whose offer is accepted." * The contract of employment is referred to in section 2 (1) (*n*), where it is stated that the Act applies "whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing." Speaking of the British Act, Mr. Beven says, "An employer is one with whom a 'workman,' within the definition in the Act, has entered into or works under a contract of service or apprenticeship." These words also apply to this Act. Note that the words "contract of service or apprenticeship" which are in the British Act, appear in section 2 (1) (*e*). A contractual relationship of employer with employed is thus essential in all cases. Those sharing, as a family or otherwise, in working an establishment cannot recover compensation from the business.

*Thomas Beven: *The Law of Employers' Liability and Workmen's Compensation.*

61. SECTION 2 (1) (*e*) contains a definition of "employer," but it is not a comprehensive definition. It does not profess to mention every class of employer. It begins with the words "'employer' includes" and then specifies three classes to be included in the meaning of the word, in addition to those covered by the ordinary meaning of the term. It then goes on to explain who is the employer in a special case that might otherwise be the subject of doubt. The three classes are:—

(*i*) any body of persons whether incorporated or not, *e.g.*, incorporated companies or groups of men who have servants jointly;

(*ii*) the managing agent of an employer;

(*iii*) the legal representatives of a deceased employer.

62. "MANAGING AGENT" is defined in section 2 (1) (*f*). Note that the term "person," in accordance with section 2 (39) of the General Clauses Act, 1897, must be read as including "any company or association or body of individuals, whether incorporated or not." An individual manager subordinate to an employer is not a managing agent. The object of including managing agents as employers is apparently to make it clear that managing agents, in employing workmen, do so as employers and not as mere agents, and are in consequence liable for compensation.

63. THE definition of "employer" also contains provision for one special case. "When the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship," the employer "means such other person while the workman is working for him." The wording here was adapted from the British Law, but this provision is the exact reverse of the British provision. In section 4 (3) of the British Act the original employer remains the employer in such a case. The Indian Act is more in accordance with the ordinary law of employment. It makes that employer liable who controlled the labour of the workman when the accident occurred. This case should not be confused with that of labour working under contractors, which is discussed in the paragraphs which follow. In the case for which provision is made here, the workman enters into a contract with one employer and then serves another for the time being.

Liabilities to Contractors' Workmen

64. THE case of workmen employed under contractors is governed by section 12. This section follows the wording and arrangement of the British law (*cf.* section 6 of the British Act) with one important addition and some variations. To retain a clear grasp of the scope and purpose of the section, it is essential to remember what the effect would be if the section did not exist. "Employer" means a person who has a contract of service with the workman. Consequently, when contractors engage labour, they are the employers of that labour, and the person from whom they have taken their contract is not the employer of any of the contractors' labourers. What this section does is to make the principal employer (*i.e.*, the man who offered the contract to the contractor) liable to pay compensation to the contractor's workmen in certain cases. The object of the section, in the words of Mr. Willis,* "is to prevent an employer from escaping liability by contracting with some one else to provide labour or to execute work, and to give a workman, employed by a contractor, a double security for his compensation, which, but for this provision, he might lose through the poverty of his direct employer."

65. THIS section has no application except in cases in which the principal would have had to pay if he had employed the workman directly. Thus the person claiming the compensation must show that he is a workman independently of this section; the section adds no fresh workmen who would not be included if it did not exist. Similarly all the other conditions necessary for a valid claim, such as that the accident arose out of and in the course of employment, must be satisfied. In other words, the section does not enlarge any person's claim for compensation; it merely enlarges the methods open to some workmen of making good that claim. If a workman has a valid claim for compensation and if he is employed under a contractor, then this section will apply provided that three further conditions are satisfied.

66. THE first condition is that the contract must be made "in the course of or for the purposes of" the employer's trade or business. The same words appear in the British Act, but this condition is not of such great importance in India because it will always (or nearly always) be satisfied automatically if the next condition is satisfied.

*W. Addington Willis: *The Workmen's Compensation Act.*

67. THE next condition, which is of prime importance, is that the work must ordinarily be "part of the trade or business of the principal." This is a notable variation from the British Act, which here has the words "undertaken by the principal." As much of the case-law which has grown up round the British section centres on this latter phrase, great caution should be exercised in applying any conclusions that can be deduced from English decisions. To take a few obvious examples, the extraction of coal is part of the business of a mineowner, and if he employs his labour through contractors, the condition is satisfied in this case. On the other hand the building of premises is not part of the business of a textile manufacturer, and if a cotton mill employs an engineering firm or a private contractor to put up an extension, the millowners have no liability towards the men employed by the contractor. Similarly, if a lawyer employs a contractor to repair his house or his office, the repair of houses is not part of the lawyer's business, and he escapes liability.

68. IN a Bombay case,* where a railway administration engaged contractors to erect steel towers to carry power for the electrification of a line, it was held that this was not ordinarily part of the administration's trade or business. Although in this case the towers were at some distance from the railway line, it is probable that the erection of new buildings, *e g.*, railway stations, on the line would be similarly treated, and that all construction of new extensions would be regarded as not ordinarily part of the railway's business. Mr. Justice Murphy observed in the case in question: "The ordinary trade or business of the Railway Administration is the carriage of passengers and goods, and the maintenance of the line necessary for this purpose."‡ Both the judgments in this case suggest that "ordinarily part of the trade or business" has the same force as "part of the ordinary trade or business" and if this is accepted, it affords an easy test to apply. The mere fact that the articles of association of a company include as one of its objects the erection of buildings is not in itself sufficient to show that such erection work is ordinarily part of the company's business.†

69. IN this connection section 2 (2) is important for it provides that "the exercise and performance of the powers and duties of

*Rabia *v.* Agent, G. I. P. Ry., LIII Bom. 203.

‡The view that the maintenance of the line is part of the ordinary business of a railway company for this purpose was also taken in Periyakkal *v.* Agent, S. I. Ry., LVIII Mad. 804.

†*Cf.* Karnani Industrial Bank *v.* Ranjan, LX Cal. 24.

a local authority or of any department of the Government," shall normally be regarded as "the trade or business of such authority or department." Thus the building of a Government office by the Public Works Department would be part of the business of that department, and they would be liable to workmen working under their contractors on such work. But "the word 'ordinarily' in section 12 applies just as much to a Government department as it does to any other principal,"* and section 2 (2) must not be read as meaning that everything done by a municipality or Government department is ordinarily part of its trade or business. The object of that sub-section is "to prevent any contention to the effect that a Government department does not carry on a trade or business."*

70. THE last condition is contained in sub-section (4), and is that the accident must occur "on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management." If the contractor does his part of the work on entirely separate premises, over which the principal has no control, the principal has no liability. If, to take an example where the condition is not satisfied, a shipping firm employs a scaling contractor who has the ship taken to his own dock, the firm is free from liability for anything that happens to the contractor's men there. The idea underlying the sub-section is evidently that the principal can exercise a certain amount of control over conditions at his own premises, but that he cannot reasonably be saddled with liability for men working elsewhere in circumstances of which he may be wholly ignorant.

Claims against Contractors

71. SECTION 12 (3) provides that nothing in section 12 is to prevent the workman from recovering from the contractor. The contractor is his employer, and the workman can proceed against him if he wishes. While the Act and Rules do not contain any specific prohibition of an application filed against a principal and a contractor jointly, it would seem that such an application would be irregular. The words "instead of the principal" in sub-section (3), although probably intended partly to prevent the workman claiming compensation twice over, suggest that when the workman claims compensation from the contractor, along

*Per Marten, C. J., in Rabia *v.* G. I. P. Ry., *supra*.

with and not "instead of" the principal, sub-section (1) is to be read without the qualification of sub-section (3). As sub-section (1) provides that, as soon as compensation is claimed from the principal, the whole Act, including section 3 (1), is to be read as if "principal" were *substituted* for "employer," the contractor's liability to the workman disappears, on this view, when such a claim is made. If a claim is presented against both, the proper course, it is suggested, for the Commissioner is to ask the claimant to withdraw the claim against one party, and if the claimant fails to do so, to dismiss the claim against the contractor. If the principal, when he appears, claims indemnification, the contractor would have to become a party, but the issue concerning him would then be his liability to the principal and not his liability to the contractor. If the claim against the principal fails on the ground that section 12 does not apply to the case, the contractor has all the liabilities of an employer, but if it fails on other grounds, or if it succeeds and payment cannot be recovered from the employer (*e.g.*, on account of bankruptcy), it would seem that the workman cannot then proceed against the contractor.

72. CLAIMS should not be made against both the principal and the contractor separately. If the workman makes a claim against the contractor, he is claiming from him "instead of" the principal. If he makes a claim against the principal he substitutes the principal for his employer, *i.e.*, the contractor. The workman would be well advised to choose one or the other at the earliest possible moment, and to serve notice on the party whom he selects. He might be able to invoke the latter half of sub-section 12 (1) read with sub-section 10 (2) to claim against the principal after he had served notice on the contractor on the ground that the contractor is a person "directly responsible to" the principal. But if he has served notice only on the principal, that is not equivalent to service on the contractor.

Indemnification

73. THE ultimate liability rests in every case with the real employer of the workman, *i.e.*, with the contractor. If the principal is liable to pay compensation in any case, he has, under the provisions of section 12 (2), the right to be indemnified by the contractor. He can, of course, only recover such sums as he was legally liable to pay, and not such sums as he thought he was liable to pay. A principal who intends to recover should be careful, therefore, before paying any money by agreement,

to satisfy himself that the money is really due under the Act, as the contractor may afterwards plead that the principal was not really liable, and thus defeat the claim for indemnity. If the principal, on the other hand, decides to contest the workman's claim, and wishes to preserve his right to indemnification if he has to pay, he should, in accordance with rule 36 (1), make his claim to indemnity as soon as he is called upon to answer the workman's application before the Commissioner. The contractor is then called upon to appear, and if he fails, without sufficient cause, to do so, he is deemed to admit not merely the claim of the workman, but the claim of the principal to indemnification. [Rule 36 (2).] A claim for an indemnity of this type cannot be brought before the Civil Courts.

74. On the other hand, the contractor cannot secure any indemnification from the principal under the Act although there is nothing to prevent the principal and the contractor having an arrangement governing the manner in which compensation charges are to be met. Section 17, which prevents "contracting out" of rights conferred by the Act, applies only to workmen's rights and not to the rights of other parties. A contract whereby the principal agreed to pay compensation claims in whole or in part would apparently be valid as a defence where the principal claimed to be indemnified under the Act. But the contractor could not invoke such a contract before the Commissioner in order to recover compensation when the claim had been made against him; his remedy would be in the Civil Court.

Sub-contractors

75. Hitherto the question has been discussed on the assumption that there is only one contractor; but sub-contracting is frequent in India and even sub-contractors at times let out part of their work. There is a direct reference to sub-contracting in section 12 (2) which refers to a "contractor who is himself a principal." Where there is a chain of contracts, the workman has the option of proceeding against any member of the chain. For the original principal is "liable to pay any workman employed in the execution of the work" and not merely any workman employed by the person to whom he gave the contract. The same liability attaches to any contractor who is himself a principal.

76. At the same time the ultimate liability can always be thrown back to the person under whom the workman is

immediately employed. The person who has had to pay compensation can under section 12 (2) recover from "the contractor, or any other person from whom the workman could have recovered compensation." It might appear that this provision could be invoked to enable a contractor who is himself a principal to recover from the original principal, but it is clear from the following part of the sub-section that a contractor who is himself a principal can recover only from a person holding a contract under him. Similarly, he can pass on to a sub-contractor his liability to indemnify the principal,* and this liability can be passed on again until it reaches the person by whom the workman is directly employed.

Third Parties

77. THERE is another method by which persons held liable to pay compensation can, in certain cases, pass on the cost; this is under section 13 which treats of the remedies of an employer against a stranger. This section corresponds in some particulars to the British section 13, but differs from it in two important respects, *viz.*—

(*i*) it says nothing about the rights of the workman against a third party;

(*ii*) recovery is by procedure in the ordinary Civil Courts, and not in compensation proceedings.

78. THE section enables an employer from whom a workman has recovered compensation to recoup himself at the expense of any third party to whom he can bring home responsibility for the accident or its results. Thus if, owing to the culpable negligence of a car driver, his car crashes into another car and kills the chauffeur, the owner of the other car can sue the driver of the car at fault for the compensation paid to the chauffeur's dependants, as well as for the damage to the car.

79. "RECOVERED" in this section is not restricted to recovery by claims before the Commissioner; a workman recovers compensation if he gets it by agreement. But here again, the employer who wishes to prefer a claim for damages must be careful not to pay money that is not strictly due. All that the section does is to add to any damages the employer may be able to obtain from the third party the amount of any compensation he has been obliged to pay by the terms of the Act The workman has also a right to sue third parties (but see paragraph 84).

*The findings on this point in Machuni Bibi *v.* Jardine Menzies & Co., 32 Cal. W. N. 452 and Sir Dhunjibhoy Bomanji *v.* Ganpa Khandu LVII Bom. 699 are no longer applicable as section 12 (2) was amended by the Act of 1933.

Contracting out

80. It is important to notice that, although an employer may be able in some cases to recover from other persons what he has given in compensation, he cannot evade the liability by any arrangement with the workman. Section 17 prevents, in the clearest possible terms, any "contracting out." Thus if the employer gets the workman to agree that in the event of an accident, he is not to claim full compensation or is not to claim any compensation, or is to get some different kind of compensation from that specified in the Act, such an agreement will be of no avail to the employer when the accident occurs. The workman will be able to assert his full rights under the Act in spite of it, even though he has obtained some advantage, *e.g.*, higher wages, under the agreement.

81. The object of the section is to prevent workmen from bargaining away their rights; a workman out of employment might easily be tempted by a promise of a job, and many workmen would give up their rights for a slightly higher wage and thus defeat the purpose of the Act. The section, therefore, applies only to contracts made with workmen. It does not prevent the employer from contracting with some third party so as to help him to recover his loss, *e.g.*, he can contract with an insurance company, and he can contract with other employers to share mutually the cost of any accidents. As has been pointed out already, an employer can contract out of his right to indemnification, so that a contractor can have a clause entered in his contract that the principal employer from whom he has taken the contract shall defray all compensation charges.

82. The Act contains none of the elaborate provisions of the British Act (sections 3 (1) and 31) which allow an employer who proves that he has a private scheme of compensation, which is at least as generous as the Act provides, to contract out of the Act. Some employers in India, *e.g.*, the railway administrations, have schemes which are in some respects more generous than the Act. Those who desire to give compensation under their own rules can, if these rules give at least as much as the Act, invoke the first proviso to section 4 (1). Among other things, this proviso enables an employer paying money under such a scheme to set off the sums paid against any amount that may be claimed from him under the Act. It must be clear, however, that the money is paid by way of compensation. Employers who wish to operate schemes more generous

than that contained in the Act ought therefore to separate the sums due under the Act and see that these are paid in the manner prescribed. The value of this precaution will be obvious in view of what follows in paragraphs 228-9.

Alternative Remedies

83. THE liability of employers to pay their workmen for injuries sustained by the latter is enforceable, so far as this Act is concerned, only by a Commissioner appointed by the Local Government under section 20 (1). Section 19 (1) gives Commissioners for Workmen's Compensation jurisdiction to settle all disputes relating to compensation, and section 19 (2) prevents these questions from being brought before the Civil Courts. But an employer may also be liable to a suit for damages under the common law, as enlarged for fatal cases by the Fatal Accidents Act (XIII of 1855), and such a claim would be brought in the Civil Court.

84. PROVISION is made against the danger of double claims in section 3 (5). The effect of this sub-section is :—

(1) If a workman institutes a suit in the Civil Courts, he forfeits all his claims to compensation under this Act, whether the suit succeeds or not, and whether the suit is against the employer or against a third party.

(2) If a workman institutes a claim before the Commissioner for compensation, he cannot file a suit in the Civil Court, either against the employer or against a third party, whether his compensation claim succeeds or not.

(3) If a workman comes to an agreement with his employer to get compensation, he cannot file a suit in the Civil Court.

85. THE effect of this on the workman's position is clear; but the effect on proceedings by the dependants is open to doubt. Under section 2 (1) (*n*) any reference to a workman injured includes where he is dead a reference to his dependants or any of them. It is possible to read this as meaning that in section 3 (5), a suit by the workman or his dependants or any of them precludes an application by the dependants or any of them, and *vice versa*. But it is also possible to construe it as meaning that a workman or any of his dependants is barred only if the person concerned has instituted a suit or claim. It is probable that the

latter view should be preferred, particularly as death can be regarded as constituting a fresh cause of action, and that the dependants can only be barred by their own action. Further, although the words "or any of them" in section 2 (1) (*n*) are not in the corresponding British section, it would probably be held, as in the United Kingdom,* that the rights of the several dependants are distinct, and that proceedings by one of them in a Civil Court could not deprive the others of their rights before the Commissioner, and *vice versa*. An agreement by an employer to pay any compensation to one dependant would certainly not deprive the others, or even that dependant, of any rights, for such an agreement would not be an agreement to pay compensation in accordance with the provisions of the Act. (See paragraph 273 *et seq.*).

86. The general result of section 3 (5) is that the workman, or the dependants, must make their choice and cannot have it both ways. They would be well advised to prefer a claim for compensation rather than a suit for damages in every case unless they are absolutely certain of heavy damages in the Civil Court. For if they go to the Civil Court, the employer may have any of several defences open to him. It should be remembered that "under the English common law an employer is not ordinarily liable for any injury which arises from the act or default of a fellow employee and the majority of injuries probably arise in this way." Further, the workman may find himself defeated by "the common law doctrine of assumed risk, by which an employer is not liable for damage caused to his workman through the ordinary risks of the employment, while a workman is presumed to have assumed any risk which is apparent at the time of entering his employment, although in fact he may have had no knowledge of its existence."† Other defences are also possible.

87. On the other hand, the great majority of the possible defences are removed in the case of compensation claims. The difficulty attending the recovery of damages in the Civil Courts is, indeed, one of the reasons justifying legislation for workman's compensation. The Act provides a cheap, rapid and safe way to get compensation in all valid cases, whereas procedure by suit in the Civil Court is usually expensive, frequently slow and generally more uncertain. It may seem that the worker who

Cf. Kinneal Cannel Coal Coy. *v.* Waddell, 24 B. W. C. C., 181.

†The quotations are from the Statement of Objects and Reasons which accompanied the Workmen's Compensation Bill on its introduction.

chooses a compensation claim runs risks too, but as a matter of fact he is amply protected. Provided that the proper procedure has been followed, the only important ground on which a claim for compensation can fail when a civil suit might succeed is that the applicant does not come within the definition of "workman." But in that case, this sub-section has no application, for it refers only to workmen. The applicant can then turn to the Civil Court.

88. SIMILARLY, the workman is protected against (*a*) the in-danger of being bound by an agreement which gives him adequate compensation, and (*b*) the danger of being tied by an agreement which the employer does not fulfil The first danger is prevented by the use of the word "compensation" in section 3 (5) (*b*). In section 2 (1) (*c*) compensation is defined as "compensation as provided for by this Act." It consequently means the full amount of compensation, and an agreement to pay less will not secure the employer against a civil suit. It is important, therefore, for employers to make sure that the full amount is paid. The second danger is prevented by section 31 which should be read with the last phrase of section 19 (2); this makes it clear that the workman can go to the Commissioner to have the agreement enforced.

Insurance

89. IT has already been pointed out that employers are free to insure against compensation claims, and it is scarcely necessary to emphasise the fact that a single serious accident may lead to a very heavy claim; for the small employer, especially, insurance offers the only way of safety. It is, further, in the interests of the workmen that there should be adequate financial backing to meet possible claims. It will be convenient to deal here with the liability which insurance companies or private insurers incur under the Act. So long as an employer is solvent, the insurance company has no direct liability to the workman. But if the employer becomes bankrupt, section 14 contains elaborate provisions designed to protect the workman by throwing the liability on the insurers.

90. THE sub-sections, with the exception of sub-section (3), have counterparts in British legislation, but there are a number of differences of detail. [*Cf.* section 7 of the Workmen's Compensation Act, 1925 and section 264 of the Companies Act, 1929.] The general effect is to give the workman all possible

protection against losing compensation through his employer being unable to pay. Sub-section (1) states that if the employee is insured against compensation claims and goes bankrupt, the insurers must step into the place of the employer, and accept his liabilities to the extent to which he was insured with them. If he was insured in full against claims, they will have to pay the full amount of the claim; if he was insured in part, they must pay that part. The workman, if he gets only part of his rights, can apply under sub-section (2) for the rest of the money in the bankruptcy proceedings. If the employer is not insured at all the workman can apply for the whole of his claim in the bankruptcy proceedings; and his compensation claim gets priority under sub-section (4) to the full amount (and not, as in England, to a limited extent). But if the employer was insured in part, so that the workman can get some money from the insurance company and has merely to sue for the balance, then sub-section (6) applies, and the workman's claim does not get priority but must rank with ordinary debts.

91. SUB-SECTIONS (5) and (7) are straightforward. The one provides for the calculation of the right to recurring payments as a lump sum, *i.e.*, as a definite amount, and the instructions contained in rule 5 have to be followed in such cases; the other excludes special cases of liquidation which have no connection with insolvency. Sub-section (3) gives workmen in some cases a greater right against the insurers than the employer would have had, if he had remained solvent. It represents an increase over and above the liabilities imposed on insurers in England in that, when the workman claims compensation from the insurers, it will not be open to the insurers to plead that the employer had not fulfilled the terms of the contract (unless of course he had failed to pay his premia). Thus if the insurance policy contains a clause to the effect that the employer must provide certain safety devices, and if the employer has not fulfilled this requirement, that will not prevent the workman from recovering compensation from the insurance company. To gain the benefit of this sub-section, the workman must give the insurers notice of the accident and the injury as soon as he can. The ordinary notice, given to the employer before his insolvency, will not suffice. If the workman recovers money under this sub-section, the insurers have a right to attempt to recover the sum in the bankruptcy proceedings, when the debt will be given priority. [Sub-sections (3) and (6).]

Returns, Reports, etc.

92. CERTAIN obligations are, or can be, laid on employers in respect of the furnishing of information. Section 16 confers upon the Government of India power to prescribe that returns shall be furnished by employers, and in accordance with these powers the notification given on pages 229-231 has been issued. The form in which the return has to be made will be found appended to the notification. The return relates to a calendar year, and has to be furnished by 1st February in the year following.

93. THE return has not to be furnished by all employers. It has to be furnished only by those employing workmen mentioned in the notification. These include workers in factories, mines, oilfields, plantations and ports, on railways and tramway services, in fire brigades and in work connected with cinematograph pictures, electrical supply and explosives. In the case of railway servants, the return has to be submitted to the Secretary of the Railway Board; in other cases it has to be sent to local officers. It should be remembered, in this connection, that workmen employed in factories, mines, etc., owned by the railways, are included in the Act not as railway servants but as scheduled workmen (see paragraph 7), so that in their case the return should be sent to the local officer prescribed. Employers who have insured their liabilities in respect of compensation are relieved of the obligation to send a return if the insurance company or other organization with which they are insured has agreed to furnish the particulars for them and has obtained the consent of the local Government to this arrangement. The return has to be sent by all employers employing workmen of the categories mentioned; so that employers who have paid no claims for compensation during the year are not thereby relieved of the obligation to send a return.

94. EMPLOYERS and various agents of employers are also required by section 10B in certain cases to send reports of fatal accidents, and employers can be called upon by the Commissioner to furnish a statement in accordance with section 10-A in respect of a fatal accident. These provisions are discussed in paragraphs 283 to 287. Failure to send a return or report or statement, or to maintain a notice-book in cases where that is obligatory is punishable with a fine not exceeding Rs. 100/-: but prosecutions can only be instituted with the sanction of a Commissioner, and the complaint must be lodged within six months of the date of the alleged offence. (Section 18A.)

CHAPTER IV

THE CONDITIONS GOVERNING COMPENSATION

The General Principle

95. THE preceding chapters have reviewed the persons who are entitled to receive compensation and the persons who are liable to pay it. This chapter is devoted to a discussion of the circumstances in which, assuming a contractual relation of employer and employed, compensation becomes payable. What circumstances give rise to a valid claim? Section 3 (1) contains the general principle. Compensation is payable when "personal injury is caused to a workman by accident arising out of and in the course of his employment."

96. THE first essential, then, is that personal injury must have been caused. Personal injury may be regarded as somewhat wider than bodily injury as these words are usually understood. It covers any physiological injury, *e.g.*, a man suffering great nervous shock or insanity as a result of witnessing a terrible accident might be regarded as suffering personal injury. But it should be observed that it is nowhere provided that compensation should be paid for an injury; the payment of compensation is always for the *results* of the injury [*cf.* sec. 3 (1), also proviso (*a*) and sec. 4 (1) A, B, C, and D.] So that a man suffering from shock would not get compensation unless the shock resu ted in his being disabled.

97. THE results which give rise to a claim for compensation include death, permanent disablement and temporary disablement; the disablement may be total or partial. Death requires no definition; the definitions of the various types of disablement may be deduced from section 2 (1) (*g*) and 2 (1) (*l*). The meaning and application of the definitions will be considered later when the scales of compensation come under discussion.

98. THE words "If personal injury is caused to a workman by accident arising out of and in the course of his employment" are, of course, taken from British legislation. But there is a

slight difference, for the British Act reads "If.....personal injury by accident arising out of and in the course of the employment is caused to a workman....." The result is that, whereas in the British Act the words "arising out of and in the course of employment" qualify the words "personal injury by accident," in the Indian Act the words obviously qualify the word "accident." One effect is that the fine distinction occasionally drawn in England between the meaning of "by accident" and the meaning of "by an accident" disappears so far as the Indian Act is concerned. But this difference should rarely come into play. The words "injury" and "accident" can probably be regarded, as they are in England, as almost interchangeable. Compare the wording of section 17 and section 18, where they are used in the same sense.

Accidents

99. THE injury, then, must arise from an accident, and the next question is—What is an accident? A reference to section 3 (2) will show that, in certain circumstances, the contracting of certain diseases is to be regarded as an accident. But this is a special meaning expressly given to the word by this sub-section. If the sub-section was not there, no one would suggest, for example, that the contracting of lead poisoning by a press operative who had got it by inhaling lead in microscopical quantities for a year was an accident. And it cannot be too strongly emphasised that the words of an Act like this "must be construed according to their ordinary and popular signification,"* unless express directions are given to the contrary.

100. CONSEQUENTLY, except in the rare cases to which the express direction in section 3(2) applies (see paragraph 136), the ordinary meaning of the word "accident" is to be taken. What, then, is this meaning? There are two elements that must be present to constitute an accident. The first is that it must be an *unforeseen* occurrence. An event which has been intentionally brought to pass by the man who suffers from it or is expected by him is not an accident. Lord Macnaghten, in a much-quoted definition, has described an accident as "an unlooked-for mishap or an untoward event which is not expected or designed."† One

*Lord Shaw in Trim Joint District School *v.* Kelly (1914) A. C. 677, VII, B. W. C. C., 274 at p. 314. The whole case turned on the meaning of the word accident.

†Fenton *v.* Thorley & Co. (1903) A. C., p. 448, V., W. C. C., p. 6. Three of the judgments in this case contain general definitions of accident.

obvious, but important effect of this is that an injury intentionally caused by a workman to himself cannot possibly be held to have arisen by accident. No compensation, therefore, can be claimed for self-mutilation. It is for this reason that self-inflicted injuries are not included among the exceptions mentioned in the proviso to sub-section 3 (1). For similar reasons, injuries inflicted with the consent or on the instigation of the person injured cannot form the basis of valid claims for compensation.

101. A QUESTION which may cause some difficulty arises when the injury is caused by an act not foreseen or intended by the workman, but intended by some one else. In certain cases, there can be no reasonable doubt. If, for example, a train is maliciously derailed by the removal of a rail, the derailment would come within the ordinary meaning of the phrase "a railway accident." The train meets with an accident owing to the rail not being in its proper position, and it is unnecessary to look further than this. The specific mishaps which may befall the engine-driver and other workmen can also be regarded as separate accidents. Here there is no immediate and certain connection between the design and these particular mishaps. But where there is such a connection, *e.g.*, where a stone is thrown by a striker at a tram-driver and hits him, or where a doorkeeper is murdered by thieves, there is room for more doubt. After conflicting decisions in the English and Scottish Courts, the House of Lords in an Irish appeal* decided by a majority of one that the murder of an employee was an accident. The four majority judgments were to the effect that an injury designed by some person other than the workman is accidental if it is not foreseen by the workman; the other three judgments are in the contrary sense.

102. THE view forcibly expressed in the minority judgments that a murder is not an accident in the ordinary sense of the word deserves serious consideration. On the other hand, once it is admitted that an accident can owe its origin to a malicious act, as in the case of the derailment, it will be found difficult to draw any line that stops short of including a deliberate assault. In the numerous American States whose Acts are similarly worded, the courts have generally allowed the wider interpretation, and have allowed compensation for murders and assaults, where other

*Trim Joint District School *v.* Kelly, *supra*. This and the case previously quoted contain what is practically a complete definition of accident for the purpose of the British Act, and the seven judgments will repay study.

conditions are satisfied. It would appear that this interpretation is more in consonance with the general intention of the Act (and of legislation of this type generally). It is relevant to point out that the Fatal *Accidents* Act (XIII of 1855) covers cases of this kind. This helps to show, as Lord Shaw, referring to the similar English Act in the case cited, pointed out, in what sense the word "accident" is ordinarily used.

103. THE second essential element is that an accident must be sudden. A gradual process cannot constitute an accident without an express provision to this effect (such as is contained in sub-section 3 (2)). Lord Reading, speaking of the English Act of 1897 which first contained the words now under discussion, stated, "The Legislature....inserted the words 'by accident' in order to exclude the right to compensation for injuries not caused by some sudden and untoward event."* A man who contracts rheumatism through working in a damp coal mine does not sustain an accident. The event must be something to which a definite date and time can be assigned.

104. COMBINING the effect of what has been stated, an accident may be described as "a sudden mishap which is not expected or designed by the workman." It should be noted that the mishap may be external or internal. A workman who sustains a rupture as a result of lifting a heavy weight meets with an accident quite as much as the workman who has his foot crushed by the fall of a beam.

The fundamental condition

105. THE phrase "arising out of and in the course of employment" is one of worldwide reputation. Originally introduced in the British Act of 1897, it has been copied by most of the American and Dominion Acts, and finds counterparts in other languages in foreign Acts. Its meaning has been the subject of numerous decisions in England, in America and elsewhere; indeed, as the British Departmental Committee of 1920 remarked, "It is safe to say that no other form of words has ever given rise to such a body of litigation." [Report; paragraph 29.] A volume could be written upon this phrase alone, but it is impossible to deal with it at great length here. Those who are interested in the detailed and particular applications of the phrase will find a close study of the English case-law almost indispensable.

*Trim Joint District School *v.* Kelly, *supra*.

106. At the same time, that is no reason why the reader who is not a lawyer, but who wishes to grasp the scope of the Act, should take fright. It is quite possible to obtain, without reference to either commentaries or rulings, an understanding of the phrase which will cover 99 out of 100 of the compensation claims that will arise. The fine distinctions which have filled so many volumes with long judgments very seldom arise; the great majority of cases are quite straightforward. And it cannot be too often emphasised that, in interpreting a phrase like this, the words are to be taken according to their ordinary meaning and not according to tests or rules suggested for particular cases. The Act is intended to be simple; it is meant primarily for workmen, and legal intricacies, while they may be inevitable in some cases, are always to be regretted. To quote Lord Haldane, speaking of this phrase in an earlier British Act, "The Workmen's Compensation Act, 1906, appears on the face of it intended to afford a simple and speedy method of claiming compensation in the cases to which it relates. These are cases of personal injury by accident arising out of and in the course of employm nt. But around the principle which Parliament laid down in this language there is already spreading itself in Courts of Justice an atmosphere of legal subtlety which bids fair to defeat the obvious purpose of the Legislature."* Assuming, then, that the method is simple, what is "the obvious purpose of the Legislature?"

The course of employment: general considerations

107. It will be convenient to take the second half of the phrase first, as it is, on the whole, broader in its application. The accident must arise "in the course of his employment." It should be noticed that "employment" does not mean the same as "engagement." It is a narrower word. A workman may be engaged by the day or the week or the month, but it is only certain portions of these periods that come within the course of his employment. On the other hand, "employment" has a broader meaning than "work." Men may be acting in the course of their employment when they are not actually working.

108. It is not easy to construct a test of universal application by which it can be decided whether an accident arose in the course of employment or not. But the main question to be examined is undoubtedly that of duty. If, when the accident occurs, the workman has any duty to the employer, if he is in any way subject

*Davidson *v.* M'Robb (1918), A. C. p. 315, X., B. W. C. C., p. 685.

to the employer's control, he will normally be acting in the course of his employment. To quote Lord Atkinson, "a workman is acting in the course of his employment when he is engaged in doing something he was employed to do, or what is, in other and I think better words, in effect the same thing, namely, when he is doing something in discharge of a duty to his employer, directly or indirectly imposed upon him by his contract of service. The true ground on which the test should be based is a duty to the employer arising out of the contract of employment, but it is to be borne in mind that the word 'employment' as here used covers and includes things belonging to or arising out of it."* The consideration of concrete examples will make the position clearer.

109. From the considerations given in the preceding paragraph, it will be obvious, in the first place, that a workman will normally be acting in the course of his employment when the place where he is and the time are such that the employer is in a position to command his services. This will be the case if the workman has reached the place where he carries on his work, and the time is such that he may reasonably be expected to be there on account of his work. If the workman is on the premises and preparing to work, *e g.*, getting out his tools, or holding himself in readiness for the machinery to start, his employment has commenced. A workman who entered the premises long before he was required, or who stayed behind for some purpose not necessarily involved in his duty to his employer, *e.g.*, attending a meeting or an entertainment, would not be covered.

The course of employment: Accidents away from the premises.

110. But accidents to workmen do not always take place when they are on the employer's premises. If a workman is injured on his way to or from his work, the accident may in some cases arise in the course of his employment. Here the question to examine is whether the workman was in any way subject to the control of the employer, whether he was doing anything necessarily involved in or connected with his duty to his employer. Obviously, if a workman is specially sent by his firm by a prescribed route to a place some distance from his usual place of work or his home to carry out a job, the journey is undertaken as part of his duty to his employers and he will be covered during it. On the other hand, the ordinary workman who is free to go home as

*Hewitson *v.* St. Helen's Colliery Co., Ltd. (1924), A. C. 59, XVI, B. W. C. C. p. 241. This case, decided by the House of Lords in November 1923, removed the ambiguities formerly found in the case-law in England, and can be commended for careful study to those interested in the question.

he chooses leaves his employment as soon as he goes through the gate of the factory, dock, etc., into the public road. He has then regained complete liberty of action and all obligation to his employer has ceased. If he is injured in a tram accident on the way home or on the way to work, he will not get compensation.* His employment did not compel him to live where he did, or to go as he did.

111. THERE remain a number of cases of greater difficulty. Employers not infrequently provide the means of conveyance for their workmen going to and from their work. For example a company may arrange for special trains for the purpose. This is especially likely where the workers' houses belong to the employer, or where, for other reasons, the terms of their employment restrict them in their choice of residence. In forming conclusions regarding accidents which take place on such journeys, similar tests should be applied. If there is any condition, expressed or implied, in the terms of the contract by which the workman has to use the train, he will be acting in the course of his employment while he is travelling in it. Thus if the workman has no other means of reaching his work, he is under an implied obligation to use the train. If there are other means, but they are extremely inconvenient or appreciably more expensive, it will probably be held that there was an implied condition that the train should be used. But if the workman is at perfect liberty to travel otherwise, and there are other suitable means of going to work open to him, the train journey is not included in the employment.

112. EMPLOYERS who provide houses, which their workmen are free to rent or not as they choose, do not enlarge their liability under the Act by so doing. But it is often an express or implied condition of employment that the workman should live in a house provided by the employer. If his living in the house is for the purpose of his duty, so that he can be on call if necessary or can render some service if an emergency arises, the workman will be in the course of his employment while he is in the house and while he is moving between the house and his work. This applies, for example, to a stationmaster living in quarters adjoining the railway station, or to a gatekeeper living at a level crossing, or to a man whose quarters are assigned with a view to the protection of the employer's premises against thieves or fire. Similarly a seaman will ordinarily be regarded as in the course of his employment throughout his stay on the ship. But where the workman

* *Cf.* Burma Oil Co. *v.* Ma Hmwe Yin, XIII, Ran. at p. 560.

lives in the employer's house not because of any duty but because there happens to be nowhere else where he can conveniently live, as in some industrial settlements in India, it would almost certainly be held that the course of employment did not extend to his leisure hours at home. The fall of the roof of the house on the workman would be an accident arising out of his employment, but would not arise in the course of his employment. The same considerations apply where the workman lives in a house because the employer provides it free, so long as there is no duty associated with its occupation.

The course of employment : other special cases

113. INTERVALS occurring in the course of a workman's work may or may not constitute breaks in the course of his employment. Here again the test of duty can be applied. So long as the workman is doing anything which he is obliged to do in order to carry out his duties, or which arises directly out of these duties he will be acting in the course of his employment. A workman who has an idle interval because he has run out of material, or because there is nothing special for him to do at the moment, or because the machinery has broken down, is still acting in the discharge of his duty, and is consequently in the course of his employment. "They also serve who only stand and wait"* is sound law in cases of this kind. The same applies to a workman who interrupts his work for any necessary purpose, *e.g.*, getting a drink. A drink at intervals is necessarily involved in the terms of his employment, and it is taken to enable the workman to carry on with his job. Even if the workman has to go a short distance outside the factory he will probably be covered. Again, if a rest-interval is spent on the premises, whether it is occupied in remaining idle or in taking food, there will probably be no break in the employment. While the workman is on the premises, he is subject to the control of the employer as a general rule, and can be called on at any time to carry out some order. But if he leaves the premises altogether for a meal or a rest, and thus goes altogether beyond the employer's control, there is a break in the course of the employment.

114. A WORKMAN who visits the pay-office for the purpose of drawing his pay is acting in the course of his employment when he is on the employer's premises for the purpose. Not only is the drawing of his pay a necessary part of the employment, but he is acting under the employer's direction in so presenting himself.

*Quoted by Lord Wrenbury in Hewitson *v.* St. Helen's Colliery, *supra*.

But a railway officer who received a cheque and was injured while on his way to the bank to cash it would have no claim to compensation. It was no part of his duty to the company to go to the bank when he did, or to go by the way he did, or when he did, or even to go at all. The mere fact—and this is important as it applies generally to all cases of this type—that a workman would not have been in the place where he was injured had he not been employed is not sufficient to give him a claim; he must show that his employment took him to that place, that it exercised, as it were, a measure of compulsion on him with regard to his movements at the time.

"Arising out of . . employment:" main principle

115. In considering the meaning of "the course of employment," regard has to be had to the circumstances in which the accident arose; in coming to the phrase "arising out of" the employment, the all-important question is the cause of the accident. To put it very simply, the accident, if it is to come within the meaning of the phrase, must be in some way due to the employment. As Lord Sumner observed, "There is, however, in my opinion, one test which is always at any rate applicable, because it arises upon the very words of the statute, and it is generally of some real assistance. It is this; Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yea, the accident arose out of his employment. If nay, it did not."* The point has been put in another way by saying that "arising out of the employment" is an expression which "applies to the employment as such—to its nature, its conditions, its obligations, and its incidents. If by reason of any of these the workman is brought within the zone of special danger and so injured or killed" the words apply.† Or, more briefly, "when a man runs a risk incidental to his employment and is thereby injured, then the injury arises out of the employment."‡

116. These dicta all affirm the same principle, namely that the risk underlying the accident must be associated in some definite way with the employment. The mere fact that a workman is injured while he is at work is not sufficient, even if he can show

*L. & Y. Railway *v.* Highley, (1917) A. C., 352, X., B. W. C. C., pp. 241, 263.

†Per Lord Shaw of Dunfermline in Simpson or Thom. *v.* Sinclair, (1917 A. C., 127, X, B. W. C. C., p. 220, at p. 235. The passage goes on to exclude "added perils;" see paragraph 126.

‡Per Lord Loreburn in Dennis *v.* White (A. J.) & Co. (1917) A. C., 479, X., B. W. C. C., p. 280, at p. 291.

that the accident would not have befallen him if he had been elsewhere. He must show that the accident had a causal and not a merely fortuitous relation with his employment. A distinction has thus to be drawn between those risks which are associated with the employment and those which are not, between the risks of the employment and the risks which are no more than risks of existence. This distinction is not easy to define further in the abstract, and in some cases the dividing line is difficult to discern. But the discussion of particular types of accident which follow will, it is hoped, clarify the underlying conception; and it must be repeated that the difficult cases are rare and the great majority which arise in practice are extremely simple.

Accidents to which the workman has not contributed

117 It is convenient to deal in turn with accidents according to the agency responsible and to begin with those accidents for which the workman injured is in no way responsible. Taking first accidents due to the acts or omissions of fellow-workers or the management, it may be observed that these will almost always arise out of the employment; for the association with the person responsible is a condition of the employment. The only likely exceptions are cases where injuries are caused, intentionally or otherwise, by another employee who is acting not as an employee but as a private person. For example, if in a dispute unconnected with the employment, one workman is assaulted by another, no claim would lie; similarly accidents arising from horseplay do not usually arise out of the employment. If a workman is injured by obeying in good faith the order of one competent to give him orders, the accident is due to his doing his duty and he is entitled to compensation, even if the superior has acted entirely improperly and contrary to the employer's instructions.

118. An important class of accidents may be described as environmental, in that they come through the medium of the material surroundings of the workman, *i.e.*, the premises, plant, machinery, etc., in or at or near which he has to perform his duties. Accidents injuring a workman at work which take the form of physical contact with the machinery or plant must arise out of the employment. Thus the breaking of a belt, the collapse of a roof, an explosion in a mine, the derailment of a train, the fall of a tree in the compound, and all such occurrences, if they result in injuries to workmen doing their duty, are accidents arising out of the employment of those workmen. The same is true, moreover, of accidents arising from material factors on

adjoining premises. Where a woman was injured by the fall of a structure adjoining, but not belonging to the premises where she was at work,* and where a workman in a factory was injured by a stone discharged by blasting in an adjacent quarry,† compensation was awarded. In each case the accident arose out of the employment because the risk underlying it was directly associated with the particular spot at which the injured person had to work. On the other hand, if the propeller of an aeroplane flying overhead broke and fell on a workman at work, this would not arise out of the employment unless he could show that, by virtue of his proximity to a hangar for example, he ran a special risk of such accidents. For, apart from such proof, the risk would be in no way associated with the spot where he worked; the accident was as likely to befall him elsewhere.

119. A CERTAIN number of accidents are due to what are called "natural causes." For those accidents the law has recently been authoritatively defined by the Judicial Committee of the Privy Council in the following terms:—

> "The accident must be connected with the employment: must arise "out of" it. If a workman is injured by some natural force such as lightning, the heat of the sun, or extreme cold, which in itself has no kind of connection with employment, he cannot recover unless he can sufficiently associate such injury with his employment. This he can do if he can show that the employment exposed him in a special degree to suffering such an injury. But if he is injured by contact physically with some part of the place where he works, then, apart from questions of his own misconduct, he at once associates the accident with his employment and nothing further need be considered. So that if the roof or walls fall upon him, or he slips upon the premises, there is no need to make further inquiry as to why the accident happened."‡

120. THESE principles are not difficult to apply. Thus if men engaged in laying the foundations of a house are struck by lightning, this will not arise out of their employment, but if a man repairing the top of a factory chimney is so struck, this does arise out of his employment, because his work exposed him

*Simpson or Thom. *v.* Sinclair, *supra.*

†See *Bombay Labour Gazette*, Vol. X, p. 765.

‡Brooker *v.* Thomas Borthwick and Sons (Australasia) Ltd. (1933) A. C. 669. at pp. 676-7. This was one of a group of cases arising out of the big earthquake of 1931 in New Zealand, whose Act is, for the present purpose, the same as the Indian Act.

to this particular risk to a special degree. If a workman is overcome by heatstroke, he will have to show that the place or conditions of his employment made him specially liable to this risk. If a workman is overwhelmed in a flood, compensation will be payable if there was a special risk, either on account of proximity to the source of the flood, or because the place where he was working was apt to be flooded or was such that there was difficulty in escaping, or for some such reason. But if owing to a flood or a storm, a wall falls on a workman, it is unnecessary to establish the existence of any special risk.

121. SIMILAR principles can be applied to the cases of injury through some agency external to the employment. If the injury arises from physical contact with some part of the place of work, nothing more is needed; if there is not this contact, it is necessary, in order to secure compensation, to show that the risk was one to which the workman was specially exposed. If a roadmender at work is struck by a carelessly driven car, the accident arises out of the employment because his work exposes him specially to that risk; but if he is struck by something dropped from a casual aeroplane, that is a risk unassociated with his employment, and he cannot get compensation. If a motor-car leaves the street and dashes into a piece of ground where a building is being erected, striking one of the workmen directly and causing bricks to fall on another, the second man is entitled to compensation while the first is not.*

122. INJURIES arising from the acts of animals are generally direct, and the test to be applied is, as before, that of special risk. An elephant trainer, or any other workman whose duties involve particular contact with animals, is clearly covered if he is injured by one of the animals. A postman who has to go through a forest and is attacked by a tiger is entitled to compensation, for the risk is one to which he is specially exposed. Indeed a postman or any man with duties of a similar character would probably be entitled to compensation on account of injuries received from any

*This may seem a very arbitrary result, but it depends on the fact that the risk of falling bricks is one which meets the workman in consequence of his employment, while the risk of being hit by a car is not. As their Lordships of the Privy Council observed in Brooker *v.* Thos. Borthwick & Sons (*supra*), dealing with the example of injury from a bomb coming from outside, "It is said how capricious is the working of the law. If the bomb injures a workman directly, he must show special exposure; if it injures him indirectly by bringing the roof down on him he can recover unconditionally. It is almost impossible to give statutory protection in any case in which the line of distinction may not appear narrow; but the dividing principle adopted is authoritative and appears to their Lordships to be logical, and they feel bound to adopt it."

animal such as a mad dog or a snake, encountered on his rounds, for the peripatetic character of his work gives him an additional liability to such accidents. But a person working in fixed premises who happens to be bitten by a mad dog that has strayed in would not meet with an accident arising out of his employment. In the case of snake-bite, it would seem to be necessary for the workman to show, either by establishing the particular prevalence of snakes in the immediate vicinity, or by proving that a snake was living near the spot where he had to work, that the presence of the snake was not entirely fortuitous. The fact that a workman would not have been bitten by the dog or snake or other animal if he had not happened to be at his work at the time is not sufficient.*

Accidents to which the workman has contributed

123. THE fact that the workman, by his carelessness or miscalculation, has contributed to the accident or been solely to blame for it is in itself no defence to a compensation claim. The conception of negligence, which plays so important a part in certain kinds of civil suits, is foreign to the whole scheme of workmen's compensation. Workman who cut themselves by letting tools slip, who drop weights on their feet or allow their hands to get caught in machines, who are injured by driving cars rashly or by falling off roofs they are repairing, or who even stumble as they are moving about, are all covered unless—

(*a*) the act which contributed to the accident was not associated with the employment, or

(*b*) their action brings them within the scope of the exceptions in proviso (*b*) to section 3 (1).

These possibilities will be discussed in turn.

124. IF the act which leads to the accident is performed in pursuance of the workman's duties, a direct connection is established between the accident and the employment, and the one arises out of the other. The difficulty which arises not infrequently is that of defining the limits of a workman's duty. Every workman is engaged to carry out certain specified work; but men are not machines and there is hardly any occupation which does not call for the exercise of judgment regarding the things that should and should not be done. In an emergency, for example, a workman may have to leave his own work in order to save his fellow-workman from injury or his employer's property from damage, and if a workman is injured in attempting

**Cf.* Burma Oil Co. *v.* Ma Hmwe Yin, XIII Ran. at p. 561.

to extinguish a fire on the premises or to prevent an accident or a theft, the accident arises out of his employment.

125. EVEN when there is no sudden emergency, cases arise where a workman has to act without instructions. If he does something which is necessary for the purpose of his work or which, though not essential, is reasonable in the circumstances to facilitate his work, the accident arises out of the employment, and this is true even if the workman does not choose the best, or even a good way of securing the end in view. For example, compensation was awarded where a jobber in a cotton-mill thought that a temporary cover put up to prevent dust from falling on the looms was admitting insufficient light, and was killed by becoming entangled in a belt as he was trying to cut the cover. A workman following a current working practice, in respect of which there are no definite instructions, is also acting within his duty, as such practices must be assumed to have the tacit approval of the employer or his agents. For example, if a man is accustomed to watch his neighbour's machine when the latter goes out for a drink, and the employer has not prohibited this, and has made no definite arrangements for relief, an accident arising from his work on that machine will arise out of his employment, although he is not paid by the employer for any work he does on that machine.

126. ON the other hand, if the workman is injured by exposing himself to what is known as an "added peril," he is not entitled to compensation. This phrase, which is frequently used in English cases, has been defined as "a peril voluntarily superinduced on what arose out of the employment and cumulative to it, to which the workman was neither required nor had the authority to expose himself."* The distinction which has to be drawn is that between performing his duties in a rash or negligent manner and a workman "arrogating to himself duties which he was neither engaged nor entitled to perform."† A workman does not forfeit compensation by doing his work in the wrong way; but if he does something different in kind from his duty, an accident so caused is not incidental to his employment and therefore does not arise out of it. When a piecer in a cotton-mill lost his arm through interfering with the tin rollers under the table, and it was clear that his duties did not involve anything of the kind,

*Per Viscount Haldane in L. & Y. Ry *v.* Highley, X., B. W. C. C. at p. 250.

†Per Lord Dunedin in Plumb *v* Cobden Flour Mills Co., Ltd. (1914), A. C. 62, VII, B. W. C. C. at p. 7. This phrase is substantially reproduced by Viscount Haldane in L. & Y. Ry., *v.* Highley, *supra*.

compensation was refused.* Again, a workman who, out of curiosity, gets a fellow-workman working a new machine to allow him to operate it, is not entitled to compensation. Similarly, to take cases not uncommon in India, an accident sustained by a workman in attempting to steal oil from bearings, or in robbing coal from pillars instead of taking it from the coal face where he has been set to work, does not arise out of the workman's employment.

127. It must not be assumed, however, that a workman who does something he is expressly instructed not to do, and is thereby injured, necessarily deprives himself of the protection of the Act. A reference to proviso (*b*) (*ii*) to section 3(1) shows that the employer is expressly protected by that proviso from a liability to compensation in certain cases arising out of the wilful disobedience of the workman. The insertion of this proviso shows that there must be accidents due to disobedience which arise out of the employment, for otherwise the exception would be unnecessary. To quote Lord Dunedin, "there are prohibitions which limit the sphere of employment, and prohibitions which only deal with conduct within the sphere of employment. A transgression of a prohibition of the latter class leaves the sphere of employment where it was, and consequently will not prevent recovery of compensation. A transgression of the former class carries with it the result that the man has gone outside the sphere."† The question in such cases is whether the workman was doing his work in the wrong manner or whether he was doing something that lay outside his work. In view of the fact that the Act of 1933 has made the exceptions inapplicable to fatal accidents, the point discussed in this paragraph is of greater importance than it formerly was.

Exceptions

128. Every injury which is caused by accident arising out of and in the course of employment does not give rise to a claim for compensation. There are four exceptions contained in the three provisos attached to section 3 (1). Of these the first and most important excludes injuries which do not result in the disablement of the workman for more than a week; this will be discussed in connection with the scales of compensation.

*Gourikinkar Bhakat *v.* Radhakissen Cotton Mills, LX Cal. 421.

†In Plumb *v.* Cobden Flour Mills Co., Ltd., *supra*, at p. 6. This has here to be read, of course, subject to the proviso that the case is not covered by one of the exceptions discussed in paragraphs 128 to 133.

[See paragraph 159.] The other three remove the right to compensation for injuries which arise from certain causes; but they can be invoked only in cases of disablement, and do not apply where the workman has been killed. The grounds for this limitation are that "when a workman is killed, it is extremely difficult for dependants to rebut evidence that the accident was caused by the workman's misconduct....Moreover the withholding of compensation for fatal accidents gives rise to great hardship to dependants and is not likely to have any educative effect on other workmen."* In their application to other injuries the exceptions protect the employer against claims from workmen who have produced accidents by acts which, in most cases, he has done his best to prevent.

129. PROVISO (*b*) to section 3 (1) accordingly defines three cases of serious misconduct in which no claim for compensation can be made. If the workman has proved that the accident has arisen out of and in the course of his employment, it is the employer who has to prove that the case is covered by an exception of this kind. In each case, the employer is relieved from responsibility if the accident is "directly attributable" to a particular cause. This is more emphatic than the corresponding British provision [proviso (*b*) to section 1 of the British Act], which does not contain the word "directly," and the Indian provisions are in every way more precise in their terms. The meaning of "directly attributable" is that the employer must show that the specified cause—drunkenness, disobedience, etc.—was the primary and immediate cause of the accident. But the words must not be taken to mean that the employer must prove that the accident was solely due to the cause specified. For, to take an example, an accident due exclusively to the intoxication of the workman does not arise out of his employment at all;† so that it is excluded without this exception coming into play. Consequently, to interpret "directly" as meaning "solely" would render this exception superfluous and meaningless.

130. THE exception contained in proviso (*b*) (*i*) covers the case of the workman being under the influence of drink or drugs. Here the true test is not the stage of intoxication reached; that may be of importance as bearing on the question at issue, but it is not the question to be answered. The question is—"Did the

*From the Statement of Objects and Reasons appended to the amending Act of 1933, which introduced this modification.

†Wm. Thomson & Co. *v.* Anderson or Scrimgeour, XV B. W. C. C. 77.

accident arise directly out of the fact that the workman was under the influence of drink or drugs ? " If it is proved that this was the case, compensation is not payable, even though other causes helped to make the accident possible. If the employer fails to prove this, he must pay, even though he shows that the workman's drunkenness made the accident more likely. Note that in this exception, as in the others, it is the conduct of *the* workman that counts. The employer by showing that the accident was due to a workman being drunk does not get out of his liability to other workmen injured in that accident. He is free only from liability to that particular workman.

131. THE next exception, which is contained in proviso (*b*) (*ii*), relates to cases arising from the disobedience of the workman. In the first place the disobedience must be wilful. Wilful means more than willing, and a little more than intentional. It implies deliberation. A workman who acts thoughtlessly on a sudden impulse does not act wilfully.* But the exception does not cover wilful disobedience to every order of the employer. The order must be " an order expressly given, or a rule expressly framed, for the purpose of securing the safety of workmen," *i.e.*, for the prevention of accidents. The proviso applies to both oral and written orders, and it applies equally to rules framed by Government and rules made by the employer. Thus most of the Mining Regulations and many of the Rules framed under the Factories Act are rules for the purpose of the proviso, as well as safety rules made by the management and general or specific orders issued with a view to safety. But mere cautions do not amount to rules within the meaning of the proviso; † the rules and orders must take the form of specific injunctions

132. IT is essential, if advantage is sought to be taken of this exception, to show that the order or rule which has been

*The word wilful appears in the corresponding provision of the British Act; its meaning is discussed by Lord Loreburn, L. C., in Johnson *v.* Marshall, VIII, W. C. C., p. 12. The view taken here, which is supported by that case, is in contrast to the tendency of the English Courts, in cases not involving workmen's compensation, to consider an act as done wilfully if the person doing it "knows what he is doing intends to do is and is a free agent." (Bowen, L. J., in *re* Young and Harston, 31, Ch. D. 174.) But it is in accord with the principle that the word should be interpreted in its ordinary sense. Moreover the association of the word with disobedience in the Indian Act (it is associated with misconduct in the British Act) makes the intention even clearer. For disobedience in itself implies intention and knowledge; mere infraction of an order is not disobedience. The point was discussed in Urmila Dasi *v.* Tata Iron & Steel Coy., VIII Pat. 24, but no clear line emerges on it from the two judgments, as it was not vital for the decision of the case.

†Urmila Dasi *v.* Tata Iron & Steel Coy., *supra.*

disobeyed had been clearly brought to the notice of the workman injured and could reasonably be presumed to have been both understood and remembered by him. A workman is not guilty of "wilful disobedience" if he fails to observe a direction which he has not properly understood or which he has forgotten. In consequence an employer or manager who frames a long and elaborate set of rules defeats his own object, for an uneducated and illiterate workman cannot possibly be expected to remember such a code, and, in consequence, his disobedience will not be wilful. The acts which lead to accidents most frequently should be prohibited by a few rules framed as simply as possible, *e.g.*, "this machine must not be cleaned while it is running," or "no matches must be struck here" or "entry into the following part of the mine is prohibited." The rules might with advantage be written in a language understood by the workmen and displayed for the benefit of those that can read; illiterate workmen should have their attention called to them at frequent intervals. Three or four plain rules constantly impressed on the workmen concerned may save the employer heavy compensation and, what is more important, may save the workmen from serious accidents.

133. The last exception [proviso (*b*) (*iii*)] is similar in character. Here again the act must be wilful, and the device removed or ignored must be one provided for safety purposes. But in this case it is necessary to show that the workman knew the purpose of the device; under the preceding exception a workman might be regarded as wilfully disobeying an order which he thought was made for some other purpose than safety, *e.g.*, to prevent him stealing, but which was in fact made for his safety. It is, consequently, in the interests both of the employer and the workmen to make sure that the men fully understand the objects of the guards and devices fitted to the machines they use. It is suggested that the general question, here as in the case of the preceding exception, can be put in the form—was the wilful act of the workman the primary and immediate cause of the accident? If it was, the exceptions apply.

Occupational Diseases

134. There is a special type of injury that has not yet been considered; this is the contracting of disease. The provisions relating to this are sub-sections (2) and (4) of section 3. For the purposes of the law, diseases fall into two distinct groups. The first group consists of the diseases specified in the Act; the second of all other diseases. The specified diseases are anthrax, which

is expressly mentioned in section 3 (2), and the six diseases included in Schedule III. Section 3 (3) gives the Government of India power to enlarge Schedule III by adding additional diseases and the corresponding occupations to this Schedule. The only addition so made (up to 1935) was mercury poisoning, which has since 1933 been included in the Act itself. In actual practice, lead poisoning is the only disease in respect of which claims have been made in India with any frequency, and such claims have generally come from persons employed in printing presses.

135. THESE special diseases are occupational diseases, *i.e.*, they are diseases to which men engaged in particular occupations are especially liable. And in every case in which an occupational disease is mentioned, the corresponding occupation is specified. For a workman to come under the provisions of sub-section (2), he must show not merely that he has got the disease, but also that he was engaged in the particular occupation mentioned. Further, he must prove that he was in the service of the employer from whom he is claiming when he contracted the disease and, except in the case of anthrax, that he had been in his service for at least six months. But this last requirement must be read in the light of the explanation appended to the sub-section, which is virtually a proviso. Its intention is clearly to cover interruptions; compare the different explanation appended to section 5. The contrast is between "period" and "continuous period," so that the former must be read as denoting a series of spells of service. The consequent result is that the workman need only prove that his total service with his employer since he last served another employer (if he ever did), is in the aggregate at least six months.

136. THE contracting of a disease is not as a rule an injury by accident;* for one thing, it is not usually sudden. But here it is expressly provided that where the conditions mentioned in the preceding paragraph are satisfied, the contracting of the disease is an injury by accident. Further, unless the employer proves the contrary, the accident will be deemed to have arisen out of and in the course of employment, so that the workman's case is complete without any further proof. It will very seldom

*By a majority, the House of Lords in the well-known case of Brintons *v.* Turvey (1905), A. C. 230, VII W. C. C., held that the contracting of a disease could be itself an accident; in this case the accident was deemed to be the alighting of an anthrax bacillus on a man's eye. The British Act of 1897 contained no provision for disease, and it is possible that, but for this, the minority view might have prevailed. It is difficult to reconcile this finding with the view that "accident" should be taken according to the ordinary meaning of the word.

be possible for the employer to prove that the accident did not arise out of or in the course of employment. But if it is proved that the workman contracted the disease before he entered the employer's service, the employer is not liable, even though service under him may have aggravated it.

Other Diseases

137. In the case of diseases that are not specified in the Act, the position is reversed; for here the workman will usually find it difficult to establish a claim. Section 3(4) makes it incumbent on him in such cases to prove—

(*a*) that there has been an accident within the ordinary meaning of the word, and not within the special meaning contained in sub-section (2);

(*b*) that that accident arose out of and in the course of his employment, and

(*c*) that the disease was directly attributable to a specific injury sustained in that accident.

138. This sub-section differs radically from the corresponding provision [section 43 (4)] of the British Act, which is based on the view that a disease is, or can be, a form of personal injury. Here it is provided that compensation is payable for a non-specified disease only if the disease arises from a specific injury. A disease is thus regarded as something distinct from an injury, and this view corresponds more closely with the ordinary usage of the terms "injury" and "disease" than the view embodied in the British law. While it may be difficult to define the dividing line between the two in scientific terms, the words in common parlance represent essentially different groups of ailments. Thus abrasions, contusions, concussions and the displacement, strain or rupture of parts of the body may be regarded as injuries, while other morbid conditions, including all cases of bacterial infection, are diseases.

139. The most frequent cases in which the conditions laid down in the sub-section are satisfied are those of septic infection supervening on wounds sustained in an accident, *e.g.*, tetanus or gangrene. On the other hand, the contracting of a zymotic disease, such as small-pox, through exposure to infection in the course of employment, does not satisfy the conditions, for there is no specific injury, even if there has been an accident. Compensation is not, of course, payable for any disease, other

than a specified disease, which has been contracted through gradual exposure, such as rheumatism contracted through work in damp surroundings or consumption through work in close and dusty premises; for in such cases there is neither an accident nor a specific injury. A doubtful case is that of disease, *e.g.*, pneumonia, contracted as the result of a sudden chill caused by an accident, such as the failure of a pump in a mine. If being suddenly chilled can be regarded as sustaining a specific albeit temporary injury, compensation is payable in such a case.

140. THE meaning of "directly attributable" has already been discussed in connection with the exceptions. Here it implies that the disease must arise from the injury as its primary and immediate cause. In other words there must be no intervening cause, but contributory causes, such as a weak state of health, will not defeat a workman's case if the injury led directly to the disease. "Directly attributable" does not mean, any more than in the proviso (*b*) to section 3 (1), the same as "solely attributable." A disease is seldom if ever due solely to one cause, and the words "solely and," which formerly preceded "directly" in section 3 (4), were deleted by the amending Act of 1933. It may be added that the exceptions to section 3 (1) are applicable to claims in respect of disease. The employer is also given special protection against disease arising through aggravation or careless treatment of injuries in section 11 (6), which is discussed in paragraphs 201 to 204 below.

CHAPTER V

THE SCALES OF COMPENSATION

General Observations

141. The principal characteristic of the scales of compensation is their rigidity. Given the wages of the workman injured and the details of his injuries, it should be possible, in all but a few cases, to determine at once the compensation. The amount does not depend on the discretion of tribunals or the bargaining capacity of the parties. In this respect the Act departs from the British model and is more on the lines followed by American Acts. The result, of course, is a certain arbitrariness; it is not possible for the Commissioner to vary the amounts to meet the circumstances of particular workmen: but if he had any wide discretion in the matter, a powerful incentive would be given to litigation, and the settlement of differences would be much more difficult.

142. The provisions governing the amount of compensation to be paid in any particular case are contained in section 4 and Schedule IV, which must be read with section 5 and Schedule I. The rates of compensation for minors differ from those for adults. The distinction between a minor or an adult is given in section 2 (1) (*a*), which fixes the dividing line at 15 years of age. Where any person injured has had his age certified for the purposes of the Factories Act, and the certificate was granted before the accident, that certificate is conclusive proof of his age, and cannot be rebutted by other evidence. (See section 18.) Thus if a workman has been working as an adult in a factory and a certificate is produced to show that he was certified as 13 years of age three years before the accident, neither the employer nor the workman will be allowed to prove that he is still under 15. The word "factory" is not defined, but in view of the context it may be taken as including for the present purpose all premises in which the certificates in question are required by minors seeking employment, *i.e.*, those factories which are subject to the Factories Act.

143. THE age should be reckoned at the time when the right to claim compensation was created. In non-fatal cases, there is no difficulty. If a minor is seriously injured, and the doctors are not able to say that he is permanently disabled for some months, the age should be reckoned at the date when the disablement began, for the disablement which began then did prove to be permanent. Its permanence was later shown to be a fact. But the case of a workman who meets with an accident when he is under 15 and dies as the result of that accident after he has passed 15 is not so simple. It might be argued that the right to compensation was created by the injury, and that therefore the right began when the injuries that resulted in the disablement and death were caused. [See section 3 (1).] But, strictly speaking, the right is created not by the injury, but by the results of the injury; until the death of the workman, the dependants have no right to compensation. Further, the words "Where death results from the injury...in the case of a minor" seem to indicate that it is the date at the time of death that counts. Note that under section 10 (1) a fresh period of limitation starts with the date of death.

Compensation for Death

144. IF an adult workman is killed, the compensation payable is that given in column 2 of Schedule IV opposite the wage-class in which the workman falls. Throughout the greater part of the range, the compensation is equal to 30 times the top wage in each class; but dependants of workmen in the first three classes, *i.e.*, those who are most poorly paid, get sums bearing a higher proportion to their wages, and there is an absolute minimum of Rs. 500. Dependants of workmen getting more than Rs. 100 receive either Rs. 3,500 or Rs. 4,000, the last sum being the maximum payable for death. If a minor is killed the compensation is a fixed sum of Rs. 200; it does not depend on the minor's wages. The amount is much smaller for a minor than for an adult, not because a smaller value is set on the life of a minor; the idea of the "value of a life" is entirely foreign to the theory of workmen's compensation. Compensation is designed to minimise the financial hardship resulting from accidents; and as a minor will have, as a general rule, no dependants, the amount provided is designedly small.

145. A BENCH of the Rangoon High Court has ruled* that payments made to a workman before death cannot be deducted

*In *re* Maung Nyi, XI Ran. 154.

from the compensation payable to the dependants on account of his death. In other words, proviso (*a*) to section 4(1) does not apply where the previous payments were made to the workman and the compensation is due to the dependants. Compensation for death is not in the opinion of the court, "a sum to which the workman is entitled" within the meaning of the proviso, but is payable to the dependants in respect of their separate and independent right. Thus, whatever payments have been made before death (and such payments may equal or exceed the compensation for death), the employer can claim no rebate and must pay the compensation afresh to the dependants in full. This is apparently not the view of the Government of India, for Form A requires a statement of the previous payments to the workman, which are quite irrelevant if they cannot be deducted. But nothing in the Rules can alter the meaning of provisions in the Act, and the Rangoon High Court's decision governs the question so far as Burma is concerned.

146. THE writer would, with great respect, submit that, if the issue is raised elsewhere, strong grounds can be given pointing to a contrary conclusion. For the issue rests, it is submitted, on the application, in proviso (*a*) to section 4 (1), of the concluding words of section 2 (1)(*n*). These provide that "any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them." That is, after a workman dies the dependants are to be regarded as included with him (not substituted for him) in all places where the Act refers to him. If in the first proviso to section 4 (1) the words "including after his death, his dependants or any of them," are inserted after the word "workman,"* the result, it is submitted, is to give the employer a right to deduct all the compensation paid to the workman.

Permanent Total Disablement

147. PART B of section 4 (1) provides for compensation for permanent total disablement. Total disablement is defined in section (2) (1) (*l*); this sub-section also details certain specific injuries which are to be regarded as resulting in permanent total disablement. The effect is that permanent total disablement is caused—

(*a*) when a workman is permanently incapacitated for all work which he was capable of performing at the time of the accident;

*"Workman" occurs in two places, but the words "during the period of disablement" provide a context repugnant to the inclusion of the dependants at the second place. [See opening words of section 2 (1).]

(*b*) when a workman is completely and permanently blinded;

(*c*) when a workman sustains any combination of the injuries specified in Schedule I, such that the percentages of loss of earning capacity shown opposite these injuries in the Schedule add up to 100 or more. For example, a man who loses an arm and a leg, or both arms, or both legs, or the right arm above the elbow and the sight of one eye, is entitled to compensation for permanent total disablement. The principle of the Schedule is discussed below (see paragraph 153).

148. THE compensation for permanent total disablement in the case of adults is set out in column 3 of Schedule IV. The scale is framed in the same way as that for death, but the amounts are 40 per cent. higher in every case. The disabled workman himself has to be relieved as well as his family out of the money. Compensation for permanent total disablement in the case of minors is a fixed sum of Rs. 1,200. A minor has normally no dependants, but disablement is usually an even more serious matter for him personally than it is for an adult, and his wages, which are always small, bear little relation to the loss inflicted on him. As few minors earn as much as Rs. 10 a month, the sum will represent many years' wages in the normal case.

149. IT may happen that a man who has sustained some permanent injury prior to an accident sustains further injuries in the accident, *e.g.*, a man who is blind in one eye may meet with an accident and lose the other eye. Or a man may lose a leg in one accident and a hand in another. If the combined injuries—those previously sustained and those sustained in the last accident—have percentages which add up to 100 or more, the injury by accident results in permanent total disablement. No deduction can be made from the sum on the ground that compensation was paid for the earlier injuries. But the amount will normally be smaller because a maimed man earns, on the average, a lower wage than a whole man.

150. THE employer is entitled, under proviso (*a*) to section 4 (1), to deduct any payments made to the workman by way of compensation before the payment of the final lump sum. Thus, for example, half-monthly payments paid while the disablement was believed to be temporary can be deducted. Section 8 (1), however, provides that lump sums are not to be paid directly to women or to persons under a legal disability. If they are paid

directly they are not to be deemed to be payments of compensation and must be regarded, therefore, as not made "by way of compensation." Half-monthly payments, paid in the belief that the disablement is temporary, are not lump sums within the meaning of section 8 (1), and even if they are made to women or persons under legal disability, they can be deducted. But lump sums paid prior to the final lump sum cannot be so deducted.*

Permanent Partial Disablement

151. COMPENSATION for permanent partial disablement is provided for in section 4 (1) C The definition of permanent partial disablement in section 2 (1) (*g*) states that it means such disablement as reduces a workman's "earning capacity in every employment which he was capable of undertaking at that time" (*i.e.*, the time of disablement), and it goes on to say that "every injury specified in Schedule I shall be deemed to result in permanent partial disablement." Two separate types of injury are thus provided for in assessing compensation—injuries specified in Schedule I and injuries which cause permanent partial disablement but which are not specified in that Schedule

152. THE scheme on which compensation for such injuries is based may be briefly explained. The general principle is that compensation should be proportionate to the loss of earning capacity sustained. If a man after an accident can earn only three-quarters of his former wages, he has lost a quarter of his earning capacity and he should therefore get a quarter of the compensation which he would get if he had lost the whole of his earning capacity—that is, if he had been permanently and totally disabled. This is obviously a fair and a sound principle. But the loss of earning capacity is not an easy thing to determine. A man after he has been seriously injured may go back to his fields and cease to be a wage-earner. He may go to a post where he is not earning all he can, or he may not be able to get a job at once. And a workman cannot be kept waiting for his compensation until sufficient experience is available to show exactly what his earning capacity is. Thus, in the absence of any special simplification, it would be necessary to frame an estimate of the loss of earning capacity in every case. That estimate, even with the best expert assistance, would involve a large amount of guess-work, with the probability of a wide divergence of view between the employer and the workman

*On any other view there is a conflict between the proviso and section 8 (1). In the original Act, section 8 (1) applied only to payments for fatal accidents, so that this question did not arise.

153. It is here that the Schedule, which is an American idea, comes in. The majority of permanent injuries received in accidents are easily recognisable, and though the loss of earning capacity resulting from such injuries will not be the same in every occupation, an average can be struck, and only a few men will show wide variations from the average. For example, it is estimated that when men lose their right hands, the average loss of earning capacity in such cases is 60 per cent. No doubt some men after losing their right hands might be able to earn about the same wages as before, while others would only be able to earn a minute fraction of their former wages. But the figure is selected as representing, as nearly as possible, the percentage diminution in the wage which the average man can expect to earn. The same figure is therefore fixed for all men, and, at the expense of accuracy in particular cases, a general rule is thus obtained which saves all the difficulties of calculation and removes a fruitful cause of disputes. As, however, it is only possible to specify in the Schedule injuries which cannot be the subject of any ambiguity, some injuries have to be left out, and for these the parties or the Commissioner must frame an estimate of the loss of earning capacity in each case.

154. Section 4 (1) C accordingly provides separately for the two types of injury. If the injury is given in Schedule I, compensation is to be calculated by taking the percentage opposite the injury, and applying that to the compensation that would have been payable if the workman had been totally and permanently disabled. For example, a man drawing Rs. 30 loses his right arm below the elbow. The percentage for such an injury is 60; if he had been totally disabled for life he would have got Rs. 1,260. The compensation is therefore 60 per cent. of Rs. 1,260=Rs. 756. Again, a boy under 15 loses a thumb. If he had been completely disabled, compensation would have been Rs. 1,200. The percentage for the loss of a thumb is 25: compensation therefore amounts to Rs. 300.

155. If the injury is not in the Schedule, the calculation is made in a similar way; the only difference is that, as already explained, the loss of earning capacity is not given in the Act and has to be estimated. Once the estimate has been made, it can be expressed as a percentage of total loss of earning capacity, and the calculation then proceeds as before. For example a man earning Rs. 25 gets a spinal injury which reduces his earning

capacity by half : compensation is 50 per cent. of Rs. 1,134= Rs. 567. In estimating the percentage the question to be answered is—what wages can this man now expect to receive ? It should be remembered that partial disablement when permanent must involve a loss of earning capacity, not merely in the occupation the man had at the time of the accident, but in every occupation which he was then capable of carrying on: consequently, in calculating the loss of earning capacity, the possibility of the man obtaining a different type of job must be borne in mind.

156. It follows from the provisions of section 4 (1) C (*ii*) that, unless the injury is specified in the Schedule, a man who is permanently injured gets no compensation in the event of his suffering no loss of earning capacity. If in spite of his injuries he is capable of earning the same wage after the accident as before, and if the injury is not a scheduled one, no compensation can be claimed (except, of course, the compensation payable for the time he was kept from work while the injuries were fresh). This, of course, does not mean that an employer can offer any man a job on the same pay in exchange for compensation, for the whim or desire of a particular employer is not a measure of earning capacity. A seriously injured man who is given his previous wages by his employer does not, as a rule, *earn* those wages. On the other hand, a man sustaining a scheduled injury must get his compensation, even though he may appear to have suffered no loss of earning capacity. This follows from the concluding words of section 2 (1) (*g*).

157. If more injuries than one are caused by the same accident, the explanation to part C of this sub-section indicates that the total amount of compensation payable for the different injuries should be added up. Where all the injuries are scheduled this is straightforward. Where some are scheduled and others are not, it is necessary to form an estimate of the percentage loss of earning capacity due to the latter and to add the percentages given opposite the former in the Schedule. But in no case can the sum payable for permanent total disablement be exceeded. Obviously, a man cannot lose more than 100 per cent. of his earning capacity. In respect of the effect of injuries in a previous accident on compensation, and the deductions that can be made from the lump sum payable, see paragraphs 149 and 150. The observations there made apply equally to permanent partial disablement.

Temporary Disablement

158. COMPENSATION for temporary disablement is regulated by part D of section 4 (1). Here different considerations come into account. A man who is rendered temporarily unfit for the kind of work he has been accustomed to do cannot be expected to take up other work of a different kind. He will not want, nor is it reasonable that he should be asked, to change his occupation: what he will need, as a rule, is rest to enable him to resume his former occupation as quickly as possible. Therefore temporary partial disablement is defined in section 2 (1) (*g*) as "such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident." Further, except in a special case, no distinction is made between total and partial temporary disablement, as far as the amount of compensation is concerned. An employer cannot insist that a partially disabled workman who is not able to earn full wages shall return and take up such work as he is capable of doing. Nor can he ask that the compensation should be reduced because the man is fit enough to earn some money if he chooses to try. So long as the man cannot earn his former wage, he cannot be compelled to work. But there is nothing to prevent an employer from bringing pressure to bear on a man who could work if he wanted to by threatening to refuse to re-employ him later. If a man does return to work and earns a wage, a reduction of compensation may be possible. [See paragraph 162.]

159. BY the first proviso to section 3 (1), no compensation is payable for injuries which do not disable the workman, totally or partially, for more than seven days. This period, which is known as the "waiting period," is fixed with a view to excluding all cases of trivial injury. One reason for the provision of a waiting period is that the inclusion of such cases would enlarge greatly the number of possible claims, with heavy administrative expenses and little benefit to the workman, who would not find it worth his while to contest a case if compensation was refused. A second object is to prevent malingering: if a workman could claim compensation for a very short absence, the employer would have no adequate means of checking the facts, as the alleged disablement might be over before he could arrange for a medical examination.

160. IF the temporary disablement lasts for more than seven days, compensation takes the form of half-monthly payments. But no compensation is payable in respect of the waiting period;

the right to compensation runs from the eighth day of disablement. The first half-monthly payment is due on the 23rd day after disablement, and a subsequent payment falls due after the expiry of each half month from that date. These payments can go on until the end of 5 years and 23 days from the date of the disablement, if the workman does not get better before then. As will be seen later, they can be commuted to a lump sum : but even if they are not so commuted, it is only in rare cases that they will go on for as long as one year. If, as will usually be the case, the end of the disablement does not coincide with the end of a half month, a proportionate payment is to be made for the broken period. [Section 4 (2)]

161. The scale of half-monthly payments for adults is given in column 4 of Schedule IV. As with all other compensation for adults, the amounts depend on the wage-group into which the workman falls. Workmen drawing up to Rs. 10 get compensation at a rate equivalent to their wages ; as wages rise the proportion borne by compensation falls until at Rs. 40 it is half the rate of wages. There is a maximum of Rs. 30 for half-monthly payments : *i.e.*, the compensation for temporary disablement cannot exceed Rs. 60 per month. All minors who are temporarily disabled get compensation equivalent to their wages, subject to the same maximum.

162. The first proviso to section 4 (1) enables the employer to deduct any allowances he may have made to the injured workman by way of compensation before the first half-monthly payment is made. The second proviso deals with the case of the man who, although still partially disabled, is actually earning a wage. In this case his half-monthly payments must not exceed the difference between half his monthly wages before the accident, and half the amount of his monthly wages after. To put it more simply, the rate of compensation must not exceed the difference between the wage-rate before the accident and the wage-rate after. Compensation must not be a source of profit. For example, a workman on Rs. 40 gets half-monthly payments of Rs. 10 each. If he earns, while disabled, anything up to Rs. 20 a month, he still gets Rs. 10 twice a month as compensation. But if he earns Rs. 24 a month, his half-monthly payments go down to Rs. 8 each. Half-monthly payments cannot be altered to meet general wage-changes which have not actually affected the disabled man. Unless he returns to work, the compensation of a disabled man depends solely on his wages before the accident.

163. SUB-SECTION (5) of section 15 relieves shipowners of the liability to make half-monthly payments to masters of ships or seamen so long as they have a corresponding liability under certain other laws. This sub-section has reference particularly to the liabilities imposed by section 89 of the Indian Merchant Shipping Act, 1923, and by section 34 of the British Merchant Shipping Act, 1906. Under these sections, if masters or seamen receive any injury in the service of the ship, the owners must provide maintenance and medical attention for them as long as they are unfit. The freedom from liability to make half-monthly payments of workmen's compensation is absolute; it is not dependent on proof that the liabilities under the other Acts have been met. A corresponding provision will be found in section 35 (1) (*f*) of the British Workmen's Compensation Act.

The Definition of Wages

164. REVIEWING the scales of compensation, it will be seen that in all cases relating to adult workmen and in cases of temporary disablement affecting minors, the amount of compensation payable is related to wages. The definition of wages is contained in section 2 (1) (*m*). This is not a comprehensive definition; it adds to the ordinary meaning of "wages" certain types of benefits and makes it clear that others are excluded. Primarily then, wages include all money payments, *i.e.*, the ordinary wage of a workman, and all allowances such as overtime payments, bonuses, and payments for idle time such as the *khoraki* given in some industries when short time is worked. These are included because they form part of the inducement offered to the workman to enter into a contract.

165. THE items expressly excluded are, for the most part, payments which represent the recoupment of expenses incurred. Thus travelling allowances and the value of travelling concessions are excluded, together with all sums paid to cover special expenses which the workman has to incur on account of his employment, *e.g.*, allowances for the provision of tools, lamps, oil, etc. Payments made by an employer towards a pension scheme or a provident fund are also to be excluded, but if the workman contributes to such schemes, the deductions made from his pay must not be deducted when his wages are being reckoned. But where a part of the workman's remuneration takes the form of a local allowance given on account of the cost of living at the place where he is employed, it is submitted that this forms part of his "wages." For the cost of living in the place is not an element in

"the nature of his employment." If he went to perform identical work in a less expensive place, the nature of his employment would be unaltered.

166. OTHER privileges and benefits are included, provided that they are "capable of being estimated in money." Though this phrase does not appear in the British Act, it has formed a criterion in decisions in England*. Free meals, allowances in grain and clothing, free or cheap housing, and the grant of land for cultivation are advantages that are capable of monetary estimates. On the other hand, the training acquired by experience in a particular job, or the privilege of using a recreation ground can hardly be assigned monetary values. These are examples of benefits of which the value depends so largely on the use which the individual makes of them as to be incapable of accurate assessment. Free medical and hospital service should probably be excluded for the same reason.

167. WAGES are something received by the workman, and the value of a concession is its value to him. This does not necessarily mean the same thing as the cost to the workman of providing it for himself. A sailor at sea could not provide his own food, or preserve it, except at prohibitive rates; and when an industry is started away from a city, with houses built by an employer, the price of private houses may be so exorbitant that no workman would come without the promise of a house. Obviously, in such a case the exorbitant price demanded by the few house-owners is not the value of the house to the workman. It is not possible to give any infallible criterion; the English courts have on several occasions gone on the cost to the employer, but if this test is taken, care must be exercised to see that the employer is not providing a substantially higher standard than that to which the workman is accustomed in his ordinary life. The amounts that a workman of the type being considered would spend on the commodity in question form a useful guide in difficult cases.

168. WAGES received from another employer on account of other work (*e.g.*, if the man is serving two employers on part-time jobs) cannot be counted. This is indicated by the references to "*the* employer" here and in section 2 (1) (*n*), and it is put beyond

*See especially Pomphrey *v.* Southwark Press (1901), 1 K. B. 86. III, W. C. C. 194. This case is valuable as bearing on the difficult question of the wages of apprentices.

doubt by section 5 Clause (*a*) of that section speaks of "payment....by the employer," referring to "the employer who is liable to pay compensation." Clause (*b*) gives the criterion of "the same work by the same employer." Clause (*c*) speaks of what is "earned....from the employer who is liable to pay compensation." The phrases quoted from clauses (*a*) and (*c*) also operate to exclude payments by third parties, *e.g.*, tips received from passengers by a cabin steward. Clause (*b*) is not so clear on this point; but it is suggested that if the Legislature had intended to lay down a different principle for these rare cases, it would have done so in a more explicit manner.

The Calculation of Wages

169. THE main purpose of section 5 is to provide for the calculation of wages. The remuneration of most workmen is a variable factor, changing from month to month or even day to day. Further, men are paid by differing periods, the day, the week, the fortnight, etc. All such payments have to be translated into months. Irregular payments, such as bonuses, and non-periodic concessions, such as the grant of a free house, have to be similarly converted. Section 5 effects this both for the purpose of calculating compensation and for the purpose of determining whether a man's wages take him out of the category of workmen.

170. THE section divides workmen into three classes, according to the length of their continuous period of service immediately preceding the accident. This period is defined by means of the Explanation as meaning service which includes no break of more than fourteen days. Absence from work for more than a fortnight constitutes a break, even though the absence has the permission of the employer and is in fact leave. Thus a railway servant on leave with pay for a month has a break in his continuous service for the purpose of this section. Where the last continuous period of service is twelve months or more, clause (*a*) is applicable: clause (*c*) applies where it is less than twelve months but not less than a month, and clause (*b*) where it is less than a month. These clauses will be discussed in turn.

171. FOR workmen who come under clause (*a*), the value of the whole of the wages, bonuses, concessions, etc., which have fallen due for payment during the year preceding the accident must be set out in cash, added together and divided by twelve. A concession such as a free house is, of course, given continuously and falls due for payment continuously. "Fallen due for payment" does not mean the same as "earned," which is the

word used in clauses (*b*) and (*c*). If a workman works on the understanding that he will be paid on the 7th of each month, and he is injured on the 5th January, the wages for the preceding December are not included in the calculation, but the wages of the December of the preceding year are included. The whole of a bonus which was paid or should have been paid during the year is included. But a bonus not declared, and dependent on the discretion of the employer cannot be counted, for it is not "capable of being estimated in money" [see section 2 (1) (*m*)], nor has it fallen due for payment.

172. CLAUSE (*c*), which adopts the basis of wages "earned," is more complicated, but will be better understood if the two arithmetical processes involved are transposed. The first step is to calculate the cash value of all wages, bonuses, concessions, etc., earned during the period taken. Concessions of a continuous character, such as a free house, are earned continuously. The aggregate is divided by the number of days comprising the period, which yields the average daily wage for that period. This is then multiplied by 30 to give the average monthly wages. It may appear at first sight that the workman gains by this method, for few workmen work on 30 days in a month; but this is automatically allowed for. The wages of a man working 26 days in a month of 30 days and getting a rupee a day come out to Rs. 26 and not Rs. 30 by the above method. If the man has worked on only 20 days in the course of two months at a rupee a day, his monthly wages come to Rs. 10. In dividing by the number of days, days in which he does not work are counted in; therefore in multiplying, the number of non-working days in a month is reckoned as well as the number of working days, and 30 is taken as the average number of days in a month.

173. CLAUSE (*b*) is designed for the workman who has served for such a short period that his wages do not afford a reasonable basis for calculation. In his case the average monthly wages of a fellow-workman employed on the same work by the same employer during the preceding year is taken as a basis. Failing any such man, the comparison is made with similar work under that employer or other employers in the locality. It is not necessary to select a particular workman for the comparison. The use of the word "average" makes it legitimate and indeed preferable to base the comparison on the wages of a number of men, if there are a number who satisfy the condition.

CHAPTER VI

NOTICE AND MEDICAL PROVISIONS

Service of Notice

174. THE first step to be taken by a workman or his dependants after an accident is the service of notice on the employer. The object of notice is to secure for the employer prompt information so that he may—

(1) verify the circumstances of the accident, while these can be easily ascertained;

(2) exercise his rights of medical inspection and keep in touch with possible developments of the injuries; and

(3) offer medical attendance and prevent aggravation of the injuries.

175. THE provisions relating to notice are contained in section 10, which is based on the British law (*cf.* sections 14 and 15 of the present British Act), but differs from it in many respects. One of the important differences is that the Indian Act makes no provision for oral notice, and the notice must be in writing. This is not stated expressly in section 10 (1), but it is clear from sub-sections (2) and (4) of section 10*. The notice must contain:—

(*a*) The name and address of the workman injured;
(*b*) the cause of the injury;
(*c*) the date of the accident.

It is not necessary that the notice should contain the details of the injuries: the employer, having got the notice, can ascertain these by exercising his right of medical examination.

176. SERVICE may be made:—

(*i*) upon the employer or upon any of the employers, if there is more than one, or

Cf. Jaichand Somchand *v.* Vithal Bajirao, LVII Bom. 150.

(*ii*) upon any person directly responsible to the employer for the management of any branch of the trade or business in which the workman was employed.

The latter alternative makes it possible for the workman to serve the notice upon the manager of the business, but not on some subordinate, such as a foreman, because a subordinate is not *directly* responsible to the employer as a rule. Under section 15 (1), a seaman has always the right to serve notice on the master of his ship. As regards workmen serving under contractors, see paragraph 72.

177. NOTICE can be served by registered post (but need not be so sent), and can be addressed to the residence or to *any* office or place of business of the person on whom it is to be served. The Act does not contain any reference to the person by whom the notice is to be given, and the employer must accept notice from any one acting for the workman, and is not entitled to proof that the person giving notice has been authorised to do so by the workman.

178. SECTION 10 (3) enables local Governments to insist on the maintenance of notice-books by prescribed classes of employers and section 18-A (*a*) provides a penalty for failure to do so when required. The rules made by local Governments in this respect will be found on pages 239, 244, 256, 264 and 275. Even where no such rule is in force, the practice is one that employers of large establishments would be well advised to adopt; it was introduced by employers in England long before it was made statutory in certain establishments there. If a notice-book is maintained, and its use is understood, the employer increases his expectation of getting prompt notice, which is as much in his interest as in that of the workman. Where a notice-book is maintained, the workman is not obliged to serve notice by making an entry in it; he can send a letter. But a workman who refused to make an entry if he was physically able to do so and if the book was brought to his notice, would have some difficulty after such a refusal in showing that he had given notice "as soon as practicable."

Time of Notice

179. THE time of the notice is of the first importance. It must be given (1) as soon as practicable, and (2) before the workman has voluntarily left the employment in which he was injured. Both these phrases are taken from the British Act, and

both these conditions must be satisfied.* The first phrase is elastic. If a workman suffers a minor injury, there should be no reason for delay; he could proceed to serve the notice as soon as his injuries were dressed. If he is carried away in a critical or unconscious state, latitude must obviously be allowed. The second phrase is not elastic. A workman leaves the employment when he signifies, by some definite statement or act, his decision to cease to serve that employer, *e.g.*, if he takes a post with another employer, or is paid off at his own request. Absence does not necessarily end the employment, even if the workman is employed by the day. If a workman is dismissed by his employer, the condition that notice must be given before he voluntarily leaves his employment has no application, and notice must merely be given as soon as practicable.

180. If notice has been given by or for a workman, and the workman subsequently dies as a result of his injuries, no fresh notice need be given by his dependants. Conversely if a workman who has had adequate opportunity fails to give notice as required, and then dies, his dependants may find themselves prejudiced by his failure. For the notice has to be given as soon as practicable after the happening of the accident, not the happening of the workman's death.

181. Special provision is also made to cover the case of the scheduled diseases. As has already been pointed out, the contracting of these diseases is deemed to be injury by accident. [*Cf.* section 3 (2).] But the contracting of such a disease cannot usually be assigned to any definite date, so that a difficulty arises in determining when the "happening of the accident" occurred. The difficulty is met by the first proviso to section 10 (1), which lays it down that the "accident" shall be deemed to have occurred on the first of the days during which the workman was continuously absent on account of the disease. He must serve the notice as soon as practicable after that.

---

*There are observations in both the judgments in Jaichand Somchand *v.* Vithal Bajirao, *supra*, which suggest that the view of the Court was that it is sufficient if one condition is satisfied, *i.e.*, if the employee has not left his employment, he need not give notice as soon as practicable. It is respectfully submitted that the sub-section, to bear this interpretation, would require "or" in place of "and" between "thereof" and "before." But it should be added that the observations made by the Court are not as emphatic as the heading to the case, and the decision turned mainly on another ground, *viz.*, that the Commissioner was correct in acting under the last proviso to section 10 (1).

Special Cases

182. In certain cases no notice is required. This is true of nearly all fatal accidents; provision is made for these in part (*a*) of the second proviso to section 10 (1). The first condition is that the accident should have occurred on the employer's premises, or at any place where the workman was working under the employer's control. Control means more than mere general direction of the employee's work. A motor-driver sent with a car or a bus-driver driving a bus is not working "under the control of the employer" unless the employer accompanies him. The second condition is that the death should have occurred either on the spot or on some premises of the employer's or in the vicinity. The result is, briefly, that the only fatal accidents not covered by the proviso are those —

(*a*) which occur where the employer has not control over the workman, or

(*b*) in which the workman has died away from the vicinity.

Further, a considerable number of such accidents will be covered by part (*b*) of the same proviso, which, however, is not limited to fatal accidents. For the meaning of "vicinity" see paragraph 194.

183. Part (*b*) of the proviso gives a similar dispensation in favour of all cases in which "the employer had knowledge of the accident from any other source at or about the time when it occurred." It would seem that "knowledge of the accident" here does not mean simply knowledge of the fact that an accident, in which the particular workman may or may not have been injured, occurred on the day in question; it means rather knowledge of the particular occurrence which befell the workman. The exception is clearly based on the idea that an employer cannot complain of not being told what he knows already, and the ordinary notice gives him more than intimation that there has been an accident; it gives him "the cause of the injury" to the particular workman.* If, for example, an employer is aware that a fall of a roof in a mine has resulted in injuries to a number of the miners, and later another man who was not known to have been injured appears with a claim, this clause could hardly be invoked to excuse failure to give notice.

184. It is for the workman to prove that the employer had information from another source. The fact that the particulars

*Therein differing from British law, under which the point here discussed is more doubtful.

were furnished at or about the time by the employer to any official, such as a factory or mines inspector, would be adequate evidence, as also the fact that the employer held an enquiry into the occurrence. "Any other source" means any other source than the regular written notice, and not any other source than the workman, so that information derived orally from the workman himself will suffice, provided that it is given at or about the time of the accident. But the proviso refers only to "the employer" and, unlike sub-section (2), does not mention persons subordinate to the employer. Moreover the definition of "employer" [see sections 2 (1) (*e*) and 2 (1) (*f*)] expressly excludes a manager. It would appear, therefore, that the fact that a manager had information will not help the workman, unless there is evidence which will warrant the assumption that that information was passed on to the employer at the time. Nor will the fact that a contractor had information be adequate if proceedings are taken against the principal employer: see the concluding lines of section 12(1).

185. No notice is required from a seaman if the accident takes place and the disablement commences on board ship: see section 15(1). This is because the master, who stands in the place of the employer, must be aware of all accidents happening on his ship, and will normally enter these in the log. "Disablement" seems to exclude accidents that are immediately fatal, but such accidents are fully covered by part (*a*) of the second proviso to section 10(1). Masters are not covered by this exception. If the master himself is injured, he must serve the notice on the employer or "person directly responsible" in the usual manner, but it will not usually be practicable for him to do so until the ship has reached port.

186. If a dispute arises later, the Commissioner has power, in certain special circumstances, to proceed with the case even though no notice has been given, or notice has not been given in proper time or in proper form. For a discussion of the circumstances in which this power can be exercised, reference should be made to paragraphs 244 to 252.

Inquiry by Employer

187. As already stated, the insistence on prompt notice is designed in the first place to enable the employer to verify the fact of the accident as soon as possible after the event. Eye-witnesses of the occurrence will be on the spot, and it will be a

simple matter for him to form conclusions as to the cause and nature of the accident. The danger of a fraudulent claim is reduced to a minimum. In most cases, the employer should be able to satisfy himself that an accident really occurred and he will be able to ascertain, before the eye-witnesses' memory has become (or has been rendered) fallible, whether it arose out of and in the course of the employment or whether any of the exceptions apply. A notice is in no sense a claim, and an employer is not compelled to take any action on receiving a notice. But the fact that an employer took no action might, in some cases, weaken any protest he made at a later stage.

188. In this connection, reference should be made to rule 11, which can be of considerable assistance to the employer in some cases. This rule enables an employer who has received information of an accident, by notice or otherwise, and who has made an inquiry into the circumstances surrounding the accident, or the alleged accident, to record with the Commissioner a memorandum of the inquiry made by him or by his subordinate. This has to be supported by an affidavit. The memorandum and any statements accompanying it will not normally be admissible in evidence if a dispute arises later, though in some cases they may be admissible in part; but they may be useful for corroborating witnesses, or for refreshing their memory, or for bringing about the discomfiture of unreliable witnesses. The procedure is not worth while in ordinary cases; but where the employer finds that the notice refers to a fictitious accident, or where the circumstances are suspicious, it offers useful protection. The memorandum should be accompanied by the statements of eye-witnesses whenever possible; other statements are of little value as a rule.

Medical Examination

189. The second purpose of an early notice is to enable the employer to have the workman medically examined without delay. The provisions relating to medical examination are in section 11 and Rules 12 to 17. The employer's right to have a medical examination conducted lasts for three days from the time "at which service of the notice has been effected." This means normally the time at which the employer receives the notice. If the notice is sent by registered post [see section 10 (3)], section 27 of the General Clauses Act, 1897, provides that, unless the contrary is proved, the service shall be deemed "to have been effected at the time at which the letter would be delivered in the ordinary course of post."

190. THE employer requiring the examination must provide it free of charge, and the examination must be conducted by a qualified medical practitioner, as defined in section 2(1)(*i*). This follows the definition contained in the Factories Act, and includes doctors registered under the British Medical Act of 1858, or under the various Indian Acts for the registration of medical practitioners. If the injured workman is a woman, she has the right to demand examination by a female practitioner if she is prepared to deposit the necessary expenses. [Rule 17 (2).] In any case, she must not be examined without her consent unless another woman is present. [Rule 17 (1).] It is obviously desirable that the doctor should in all cases record in writing the results of his examination for future reference. Where the employer wishes to utilise the provisions of Rule 11-A, the doctor's note on the case might usefully be appended to the memorandum.

191. IT is clearly in the employer's interest to arrange for a medical examination unless he is satisfied as to the effects of the injuries or is willing to pay whatever may be demanded. In the case of any dispute, the evidence of a medical man who examined the workman shortly after the accident is of the utmost value. And although three days are allowed, the sooner the examination takes place the better. Employers who are generous enough, or prudent enough, to employ a regular practitioner for the benefit of their workmen obtain a considerable advantage here, for they are able to use Rule 13 and secure the examination of the workman before he leaves the premises. Another important advantage which is gained by employing a regular doctor will be discussed later. (See paragraphs 201 to 204).

192. IF the workman has not been examined before he left the premises, the provisions of Rule 14 apply. This gives the employer the choice between sending the doctor to the workman and getting the workman to come to the doctor. The latter method is obviously impossible or inadvisable where the workman is seriously disabled, and proviso (*ii*) relieves him from the necessity of complying with an order to attend in such a case. In "walking cases" it is usually more convenient to get the workman to come to the premises. If the workman is in hospital it is possible to employ the doctor in charge of the hospital for the purpose of the examination, but there is no obligation on the employer to do so. The examination must take place after six in the morning and before seven in the evening, unless the workman agrees to be examined outside these hours,

Obstacles to Examination

193. NORMALLY there should be little difficulty about medical examination, but the workman may place obstacles in the way —

(1) He may leave the vicinity before the three days allowed to the employer have expired.
(2) He may refuse to be examined.
(3) He may obstruct the examination.

194. THE first difficulty is dealt with in section 11(3) If a workman leaves the vicinity of his place of employment before the three days have elapsed, his right to compensation is suspended. The workman is, of course, free to go as soon as the medical examination has taken place, and need not wait three days if he was examined on the first day. "Vicinity" must be interpreted fairly liberally. It obviously extends to the place where the workman lived while employed, and therefore to any place between that and the premises on which he worked. In the case of a railway worker "the place in which he was employed" might be several hundred miles long, and the vicinity could be enlarged accordingly, if such an interpretation was shown to be reasonable. The nearest hospital should probably be regarded as in the vicinity, if it is at any reasonable distance. If a workman leaves the vicinity otherwise than voluntarily, *e.g.*, if he is carried away in a helpless state, he incurs no penalty. But he cannot avoid the penalty by pleading that the employer would not have examined him if he had stayed on.

195. THE second and third difficulties are dealt with in section 11(2). The penalty for refusal or obstruction is the same as for leaving before the proper time; the right to compensation is suspended. In the case of refusal it is open to a workman to plead that he was prevented by sufficient cause from submitting himself; this does not apply to obstruction. Cases very seldom arise where refusal can be excused as being due to sufficient cause, for refusal implies something deliberate and is not the same thing as omission or failure A possible example is that of a man who is faced with a matter of grave urgency unconnected with the accident, *e.g.*, a sudden and dangerous illness to a near relative, or an impending law suit of importance. Such an emergency would not be likely to make it necessary for him to refuse to appear for the first examination, but it might compel him to refuse temporarily to attend a later examination, if he had left the vicinity in the interval. See also paragraph 200.

196. SUSPENSION of the right to compensation means, of course, that the workman cannot claim compensation until after the suspension has ended. He can end the suspension by returning and offering himself for examination, by consenting to the examination, or by ceasing to obstruct it, as the case may be. In this case the Rule 16 applies, and the employer has the right to determine the time and place of the examination. Unless the workman consents, the examination must take place within 72 hours from the time when the workman offers himself. This does not imply that where a workman who has been obstructing expresses his willingness to be examined, but is so disabled that he cannot go to the employer's premises his right is suspended again for his refusal; in such a case, his refusal is excusable on the ground that he was prevented by sufficient cause. But where a workman left the vicinity before the first examination, he must, under section 11(3), return before the suspension ceases; if he is seriously injured, he may thus incur a considerable penalty for leaving.

197. THIS follows from the fact that, in most cases, there is more involved in suspension than suspension of the right to claim. Under section 11(5), the workman will not be able to recover compensation for the period of suspension. Further the waiting time ceases to run during the period of suspension, so that if the workman goes away on the fourth day after the accident, the waiting period does not end until the fourth day after he returns. The effect of these provisions, in the case of temporary disablement, is that the workman loses for good any half-monthly payments for a period equivalent to the period of suspension, so that if he comes back well, he gets no compensation at all. But if he suffers permanent injury, suspension involves no more than the postponement of his claim. The question of the aggravation of injuries, which is obviously important in this connection, will be considered later (paragraphs 201 to 204). There is, of course, a limit to this postponement: if the workman stays away six months his claim is barred by limitation (see paragraph 242).

198. THERE is one case in which the workman cannot find a place of repentance; this is when death supervenes. In view of the very strong impulse which seriously injured men have to return to their own homes, power has been given in section 11(4) to the Commissioner to award compensation if he thinks fit. This obviously involves the power to withhold compensation, so that the dependants cannot insist on compensation on the ground that

the dead man has ceased to refuse to be examined. The power is not one to be used lightly; for if the employer is deprived of the right to medical examination, one of his leading safeguards is taken away. It is intended rather to cover the case where there is no doubt that the workman did receive injuries that were likely to result in his death. It is for the dependants to prove the details of the accident and of the injuries, and it is for them to show cause to the Commissioner for the use of his exceptional powers. And in their endeavour to prove their case, they may find that, if the deceased's act has deprived the employer of a right, it has deprived them of evidence that may be vital to their case. It should be noticed that the Commissioner must award the full amount of compensation or none; he cannot award reduced compensation. [See section 2 (1) (*c*).]

Subsequent Examinations

199. In addition to the right of the first medical examination, the employer is given, by section 11 (1), the right to medical examination of the workman "from time to time" provided that he is making half-monthly payments. Such examinations are obviously required in most of the cases in which the disablement lasts for any considerable period; they may also be necessary for the purposes of review or commutation. The right of examination is, however, restricted by rule 15. The effect of this rule is that, while the employer is at liberty to examine the workman at the place where the workman is residing at intervals as frequently as he considers necessary, he can only require the workman to come to his premises for examination twice in the first month after the accident and only once in every following month. The first medical examination, which is held before the employer starts to make half-monthly payments, is apparently not included in the number allowed in the first month.

200. As the workman is at perfect liberty to leave the vicinity after the first examination (for section 11 (3) refers only to this examination), the employer may find it impossible in many cases to obtain more examinations than the number specified by sending a doctor to his residence. But he can require the workman to return for examination in accordance with rule 15, provided, of course, that the workman's condition permits of his return. It may appear that, if the workman is available at his residence, there is no limit to the extent to which he may be annoyed by frequent appearances of the doctor, but if the doctor appeared oftener than was reasonable in the circumstances of the

case, the workman would probably be justified in refusing to be examined. Section 11 (2) applies equally to the first and to subsequent examinations.

Aggravation of Injuries

201. THE third object served by the obligation to give notice is to enable the employer to offer medical attendance and so to prevent aggravation of the injuries, or, if he fails in this, to protect himself from the results of such aggravation. The relevant provisions are contained in sub-section (6) of section 11. There are several minor obscurities in the sub-section, which are discussed below, but the main effect is clear. The sub-section gives the employer a considerable measure of protection against the danger of having to pay for effects which arise from an injury, but which could have been prevented by reasonable care. The employer, to secure this protection, must be willing to supply medical attendance free. The medical attendance must be provided by a qualified medical practitioner (see paragraph 190) and the employer will presumably offer, as a rule, the services of the doctor who conducts the examination, the offer being made then. A general standing offer by the employer, which is made to all workmen on taking up employment, would probably be deemed insufficient, for a workman who did not take advantage of such an offer when he was injured could hardly be said to refuse the offer; he merely ignored it. The workman may accept the offer and avail himself of the treatment. If he refuses the offer, or refuses to carry out the instructions of the doctor, he runs the risk of losing compensation for any injuries that may result in consequence. If the injuries are aggravated, the workman is protected only if (*a*) he has been attended by a qualified medical practitioner of his own, or (*b*) he had reasonable grounds for refusing. Reasonable grounds would arise where the workman refused to undergo a very dangerous operation.

202. THE sub-section is not clearly worded. "Thereafter" has no particular force in its present place, and the words "such failure" occur without any previous mention of "failure."* If "failure" has any meaning, it must refer to the workman's failure to be "regularly attended by a qualified medical practitioner," but its position between "refusal" and "disregard" tells

*The drafting was criticized in Aroth *v.* Craig Jute Mills, Ltd., LV Cal 1259. The words "such. . . .failure" referred to a definite "failure" in the original Bill, and the confusion is due to an amendment made in Select Committee.

against this interpretation. In a Calcutta case,* the workman was regularly attended by the employer's medical man but was disabled by his own disregard of that doctor's instructions. It was held that the words "if it is thereafter proved that the workman has not been regularly attended by a qualified medical practitioner" could not apply to such a case; in other words the workman could not be regarded as having proved that he had been regularly attended by a qualified medical practitioner. On the view taken by the Court in this case, the sub-section can, for all practical purposes, be read as if "another qualified medical practitioner" were substituted for "a qualified medical practitioner" in the phrase quoted above, and this is evidently the intention of the sub-section.

203. THERE is a further obscurity in connection with the word "attended." This must, it is suggested, be given the same connotation as the words "medical attention;" *i.e.*, it means more than visited, and includes at least all treatment given by the doctor himself or ordered to be given in his presence. If "attended" meant no more than "visited," the concluding part of the sub-section, and hence the sub-section as a whole, would have no real meaning, as the mere visits of a doctor whose advice was ignored and whose treatment was not taken would not make any difference to the workman's condition. But does "attended" cover treatment which a doctor directs to be given or taken in his absence? It can be urged in favour of the affirmative view that if "regularly attended" means the same as "regularly accepted proper medical attention," the concluding lines of the sub-section give a definite criterion. But if it covers the case of a man who accepts a doctor's personal ministrations and ignores his prescriptions and advice, there is no definite criterion; for it would be difficult, if not impossible, to say what results could be attributed to part of a doctor's treatment. But the point admits of considerable doubt.†

204. WHATEVER view be taken on this point, in practice the employer who offers adequate medical attention will secure adequate protection, for the workman will seldom have recourse to another *qualified* medical practitioner if the employer's doctor is available to him free. [See section 2 (1) (*i*).] If the employer does not take advantage of section 11 (6), he is liable for all the

*Aroth *v.* Craig Jute Mills, *supra*.

†The Calcutta decision suggests a negative answer, for in that case the workman definitely undid the doctor's work by removing later the bandages he had applied.

disablement resulting from the accident, even though some of it could have been prevented by taking precautions. The workman who has not been offered medical attention is under no obligation to engage a qualified medical man, or any medical man at all, or to exercise any particular care. If the workman's failure in these respects leads to aggravation of the injuries, he can still claim compensation for all the disablement he sustains.

CHAPTER VII

UNCONTESTED CASES OF DISABLEMENT

205. THE procedure in respect of fatal and non-fatal cases differs in so many particulars that it is convenient to deal with them separately at this stage. The present chapter is therefore confined to cases of disablement, *i.e.*, non-fatal cases, in which the employer is prepared to pay compensation.

Methods of Payment

206. THE lump sum payable for permanent disablement should ordinarily be paid directly to the workman, after agreement is reached as to the amount due, provided that the workman is a male over 18 years of age. [Section 8(6).] The amount due is not a matter for bargaining but for calculation; as already explained, if there is agreement upon the facts, the sum is rigidly fixed by the Act in every case. Even when a workman has agreed to accept, and has taken, a smaller sum than the amount fixed by the Act, section 17 completely protects his right to bring proceedings for the balance. Any agreement with the workman for a lump sum must be registered: see paragraph 216 below.

207. THE employer has, however, the option of depositing the sum payable with the Commissioner under section 8 (2). This course is not advisable unless there is a difference of opinion as to the amount due, or unless, by reason of the workman's absence or for other reasons, there is difficulty in getting him to signify his acceptance of the amount. Such deposits have to be made with Form D and a receipt has to be given by the Commissioner in Form E.

208. WHEN the injured workman is a woman or a person under a legal disability, the payment should always be made by deposit with the Commissioner and not directly to the workman; see section 8(1). Although the Act treats all persons over 15 as adults [see section 2(1)(*a*)], all persons under 18 are "under a legal disability."* If payment is made to any such person or

* The term also includes lunatics, but they are not likely to be employed as workmen.

to any woman directly, the payment is not "deemed to be a payment of compensation." In other words, the workman can apply for the payment to be made over again and the Commissioner would have to enforce such a claim. Deposits of this kind also have to be accompanied by Form D and receipts are given in Form E. Section 8 (7) gives the Commissioner a discretion to invest or otherwise to apply sums so deposited for the benefit of the payees. The restrictions on the manner of investment contained in Rule 10 apply only to sums due in fatal cases, following section 32 (2) (*e*), and are therefore inoperative in the cases now being considered. Section 28 requires that an agreement shall be registered in these cases; but see paragraph 230.

209. In the case of temporary disablement, the first periodical payment is not due until the twenty-third day of disablement unless the disablement comes to an end before then, when it is payable on its conclusion. Thereafter payments are due half-monthly. Payments, whether to a man or woman or a child can be made directly; but the employer has the option of depositing the money with the Commissioner if the total sum payable is not less than Rs. 10/-. In the case of women or persons under 18, section 28 requires that an agreement should be registered, even if the disablement is temporary. The Commissioner has authority, under section 8 (7), to direct the employer who is liable to make half-monthly payments to a person under 18, to make them instead to parent or guardian, or such other person as he may select.

Commutation

210. The half-monthly payments due for temporary disablement may continue for five years, if the disablement lasts so long. As a matter of fact, cases involving temporary disablement seldom last for more than six months, and the majority of cases are of much shorter duration than that. But where the disablement lasts for any long period, the continuance of half-monthly payments generally involves inconvenience to both parties. When the workman is disabled, and appears to be likely to be off work for some time, he usually wants to return to his home. This may be at some distance from his place of employment; it is frequently in another province. In such cases the despatch and receipt of small sums, twice a month, may be far from convenient. Section 7, therefore, permits the parties to commute the half-monthly payments for a lump sum.

211. It is suggested that employers' and workmen's interests are both served by adopting this procedure in the majority of cases where the workman wishes to leave the vicinity. From the point of view of the employer, it is perhaps worth mentioning the fact that experience has shown that the payment of a lump sum has a remarkable effect in promoting speedy recovery. The dishonest workman has no motive for malingering, when his claim is paid up, and the honest workman has an increased " will to get well " when he realises that he will get no more money for the duration of his illness.* There is a further saving in office work by getting rid of half-monthly payments From the point of view of the workman, there are equal attractions. He gets the money at once, and he is relieved from the risk of being called back once a month for a medical examination, and from the danger that the employer will stop the payments before he is really fit for work.

212. If the parties agree to commutation, they would be wise to take Rule 5 (1) as a guide to the sum to be paid. This rule is framed for the guidance of Commissioners in deciding applications for commutation, and is not obligatory upon the parties in cases of agreement. But the sum paid will in any case come under the scrutiny of the Commissioner (see paragraph 216), and he would naturally reject on the ground of inadequacy an agreement allowing a sum appreciably below the scale indicated in the Rule. Under this Rule, the first thing to do is to estimate the number of months the disablement will probably last. This must, of course, be a guess, and in all cases of difficulty medical advice is of great assistance. The next thing is to calculate the total of the half-monthly payments which would have to be made if the disablement just lasted the period estimated, and if there was no commutation. From this total one-half per cent. should be deducted for each month of the estimated period, and the annas and pies should then be cut off.

213. Arithmetically the formula is,

$$2np\left(1-\frac{n}{200}\right)-k,$$

where n is the number of months the disablement is expected to last, p is the amount of each half-monthly payment and k the odd fraction of a rupee. The formula is intended, of course, to allow a reasonable discount in view of the fact that the employer is paying at once money due on account of future disablement. For example, if a man to whom half-monthly payments of

*See Report of Departmental Committee (U. K.), 1920, paragraph 83.

Rs. 8/- are due is expected to be disabled for four months, the total payments that would be due come to Rs. 64. From this 2 per cent. has to be deducted, or rather more than a rupee. The redemption sum is Rs. 62 after rounding.

214. IF either party is unwilling to agree to commutation, there is nothing more to be done until the half-monthly payments have continued for six months. The party desiring commutation can then apply* to the Commissioner, who must follow the Rule just discussed if he agrees to order commutation. Under Rule 5 (2) he can, however, postpone a decision for a period of two months or less on the ground that he is not able to form even an approximate estimate of the time the disablement is likely to last. This might be the case where it was uncertain what developments would take place in the injuries. Further, section 30 (1) (*b*) suggests that it is open to him to refuse to allow commutation altogether, although the provisions of rule 5 do not contemplate such an alternative.

215. THE fact that permanent disablement is a possible development need not be a ground for postponement, nor need a workman hesitate to commute on the ground that his disablement might prove permanent. In arranging for commutation, the workman does not take a lump sum in exchange for all claims; he merely redeems "his right to receive half-monthly payments" and does not surrender any rights which may later accrue to him to get compensation in the form of a lump sum. This is clear from the wording of section 7; see also the terms of Form K, appended to the rules, and intended for use in cases of this kind. Of course, if the disablement proves permanent, the employer will be entitled to deduct from the amount of compensation due the amount he has already paid in the form of half-monthly payments, and the amount he has paid in commutation.

Registration of Agreements

216. REFERENCE has been made to the obligation to register agreements in certain cases. Section 28 provides that agreements are to be registered where any lump sum is payable by agreement, that is in all cases of permanent disablement and in all cases of commutation. (For reasons stated later, registration is not necessary in fatal cases.) It also provides for obligatory registration in the case of all payments to women or persons under 18. The section follows British Law in certain respects

*Form H gives the particulars required in the application.

[*cf.* sections 23 (1) and 25 (4) of the British Act]. Its object is to ensure that in certain cases the sums which the employer agrees to pay and the workman agrees to accept come under the Commissioner's scrutiny, so that he may judge of the fairness of the agreement and protect the workman from accepting an inadequate amount.

217. THE obligation to present certain agreements for registration is laid on the employer, and it would seem that he alone has the right to present a memorandum; this is an important difference from the British Law. Proviso (*b*) to section 28 (1) referred to the presentation of memoranda by the workmen, but this was repealed in 1929, and the section now contemplates registration by the Commissioner only after the memorandum has been "sent by the employer." If the employer fails to discharge his obligation, it would seem to be open to the workman, after approaching the employer, to apply under section 22 to the Commissioner asking him to call on the employer to do so, although there is no express provision for such a procedure. Alternatively he could apply for the enforcement of the provisions of section 29. The simplest method, however, where a lump sum is concerned, would be to apply to the Commissioner to enforce the agreement under section 31. The power to enforce agreements under this section is quite general in its terms and is not limited to registered agreements or, for that matter, to agreements which are capable of registration. [The Act does not contemplate the registration of any agreements other than those whose registration is obligatory.]

218. THE first step towards registration is the presentation of a memorandum of agreement. This is not the same thing as a written agreement. There may be a separate written agreement, but it will usually be unnecessary to prepare such an agreement,* the agreement can be oral and the memorandum can be used for recording its terms in writing. Even where there is a formal written agreement, the memorandum has to be prepared in the prescribed form for registration. The forms prescribed by Rule 44 are Forms K, L and M appended to the rules. These provide respectively for—

(1) The case where the right to receive half-monthly payments is redeemed for a lump sum.

*Under Government of India, Finance Department (Central Revenues) Notification No. 2646 of 26th June 1924, agreements between employers and workmen regarding the payment of compensation are exempt from stamp duty.

(2) The case where a lump sum is paid for permanent disablement.

(3) The case where half-monthly payments are to be made to a person under a legal disability.

Where a person under a legal disability is receiving a lump sum, Form K or Form L should be followed as far as possible. Under Rule 44, the memorandum of agreement should be presented in duplicate; one copy has to be retained by the Commissioner under Rule 48; the other is presumably intended for forwarding to the other party (if that party did not join in the application) on the analogy of Rule 23.

219. THE Forms are useful as showing clearly what is involved in an agreement. It has already been stated that an agreement to redeem half-monthly payments for a lump sum involves no surrender of rights to compensation for permanent disablement, and Form K accordingly speaks of the full settlement of every claim "in respect of all disablement of *a temporary nature*, whether now or hereafter to become manifest." Form L, which relates to permanent disablement, requires particulars of the disablement and refers to "the disablement stated above and all disablement *now manifest*." The workman does not surrender his rights to further compensation should more serious permanent injuries result at a later stage, *e.g.*, a workman who has received compensation for the loss of one or two fingers would not be precluded from claiming more compensation if his arm had to be amputated later. Form M reserves the right of the employer and of the workman to variation in the rate of compensation, if the workman's earnings increase or diminish (see paragraph 162). Rights to commutation are also retained by both parties.

220. IT will be clear from the Forms that a memorandum of agreement need not be signed by both parties. This is, indeed, implied in the terms of section 28 (1). The memorandum can be signed by the employer alone, provided that the workman has agreed, orally or in writing, to its terms. But it is advisable, wherever possible, to secure the signature of the workmen. For there is less likelihood of a dispute later if both parties have signed. Such money as is due can be paid before the memorandum is presented; if this is done, there will be even less chance of the registration being disputed, and the receipt can be taken on the memorandum. A small saving in fees is also secured by getting the workman's signature.

Procedure in Registration

221. THE Commissioner, on receiving an agreement for registration, has the option of proceeding under Rule 45 or Rule 46. The first rule is intended for those cases in which it appears, *prima facie*, that the agreement is one which ought to be registered; the second is for cases where there are *prima facie* grounds for considering that registration should be refused. In the first case a notice in Form N is issued to both parties, unless they are present and can be informed orally. As a matter of fact, the most convenient course for everyone concerned, and the course frequently followed is for the employer and the workman (or their representatives) to appear together with the memorandum before the Commissioner. If the agreement appears to him to be a proper one, he can give oral notice there and then to the parties under Rule 45 (1). Formal registration can then be effected seven days later [as required by proviso (*a*) to section 28 (1)] in the absence of the parties.

222. ON receiving a notice in Form N, neither party need appear or take any further action, unless the case is one which presents peculiar difficulty, or unless they desire to offer any objection to registration, or have reason to apprehend objections from the opposite party. If no objections are made the Commissioner will then record the memorandum in the manner prescribed by Rule 48, unless he has in the interval found some reason for not doing so. If he refuses to record the memorandum after issue of a notice in Form N, he must inform the parties present and he must also send information in Form O to any party desiring to record the memorandum, if any such party is absent. If he desires further information from any party before giving a decision, he can, of course, call for it, and this might be the best procedure where he has been given reason to change his mind in the interval.

223. WHERE there are *prima facie* grounds for refusing to record the memorandum, notices will be issued in Form P or Form Q. The former is to be sent to parties applying to register, and the latter to a party not joining in the application but the Commissioner is not compelled to issue a notice to a party who has not applied for registration, and if the agreement is, on the face of it, entirely unsuitable, he will presumably call only on the one party in the first instance. The parties to whom notice has been given have then the opportunity of showing why the agreement should be registered, and if they convince the Commissioner he can go on to registration, provided that all the parties have had a notice. Otherwise, he must then proceed as laid down in Rule 45.

Refusal to record memorandum

224. THE Commissioner, on receiving an application to register an agreement, is empowered by proviso (*d*) to section 28 (1) to refuse to register it if he considers that—

(*a*) the agreement ought not to be registered by reason of the inadequacy of the sum or amount, or

(*b*) the agreement has been obtained by fraud or undue influence or other improper means.

Moreover it is his duty to satisfy himself, whether objection is taken by the parties or not, that the agreement is not open to objection on at least the first of these grounds. Ordinarily, he will not be in a position to question an agreement on the second ground unless his attention is called to some impropriety by one of the parties; but he has to be satisfied that the agreement is genuine and, if both parties are present, can take the opportunity of ascertaining that both parties have voluntarily agreed to the terms. It would appear from the wording of section 28 (1) that he cannot decline to register the agreement on other grounds. Thus he could not refuse registration on the ground of a change in the workman's condition since the agreement was reached, unless that change had made the agreed amount inadequate.

225. THE adequacy of the lump sum or half-monthly amounts payable under the agreement has to be judged by comparison with the sum or amounts that would be recoverable on application to the Commissioner. In cases where the agreement is one for commutation, the Commissioner has a general guide to the adequacy of the amount in Rule 5. This rule does not refer to commutation by agreement, but to commutation in cases of disagreement, and agreements can be recorded for sums differing from that reached by this rule, provided the Commissioner considers that they are reasonably adequate. He must, however, in such cases record his own estimate of the probable duration of the disablement under Rule 47 (3).

226. IN the case of other agreements, the Commissioner has to be guided by his estimate of the compensation payable, but it is suggested that he should not refuse registration merely because there is a trifling difference between the results of his own calculation and the amount entered in the memorandum. Where the difference is an appreciable sum, it is his duty to refuse. The use of the words "ought not to be registered" and "may refuse" implies that the Commissioner has a certain amount of discretion in the matter. This discretion can also be exercised where undue

influence, etc., is proved. The Commissioner can in such cases go on to record the memorandum if he is satisfied that the effects of any impropriety have been removed and that the agreement is a fair one. In every case of refusal, the Commissioner must record his reasons under Rule 47(1).

227. WHEN the Commissioner refuses to record a memorandum, he has authority, in the words of proviso (*d*) to section 28 (1), to " make such order, including an order as to any sum already paid under the agreement, as he thinks just in the circumstances." This is a very wide power, and it is apparently intended mainly to enable orders to be passed for the payment of the correct amount of compensation. Thus the Commissioner can, if the amount paid or agreed upon is inadequate, direct the employer to pay the balance; but before passing such an order he must, in accordance with Rule 47(2), give the employer the opportunity of showing cause against the order. It is suggested that, in cases of inadequacy, it is better for both parties that the Commissioner should pass orders. If he merely refuses registration, the workman may be compelled to file a claim, and he may have to return from his home for the purpose. Moreover, the employer is left in the air ; he has to get into touch with the workman again, and endeavour to draw up a fresh agreement. The passing of orders by the Commissioner lets the parties know exactly where they stand ; the employer is relieved from applying for registration again, and the workman has a definite order for the payment of his full compensation.

Penalty for Failure to send Memorandum

228. SECTION 29 provides a penalty, which may be a heavy one in some cases, for failure on the part of an employer to send a memo andum of agreement where he is obliged by section 28 to send such a memorandum. The section is in some respects a little obscure. It begins by stating that where the employer fails to fulfil the obligation, he " shall be liable to pay the full amount of compensation." This, by itself, does not seem to add anything to the employer's liability. But the section goes on to say that notwithstanding the proviso to section 4(1), the employer " shall not, unless the Commissioner otherwise directs be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise." The proviso in question* relates to payments made

*The reference is evidently to part (*a*) of the proviso.

prior to the payment of compensation, *i.e.*, in the case of temporary disablement it enables the employer to deduct sums allowed to the workman before the first half-monthly payment, and in the case of permanent disablement it allows him to deduct such sums and any half-monthly or other payments.

229. IT is clear, therefore, that in the cases of payments which can be deducted under the proviso, the effect is to deprive the employer of the right to deduct one half of such disbursements, or in other words to render him liable to make one half of such disbursements twice over. Thus, for example, if an employer is liable to pay a lump sum of Rs. 1,008 for permanent total disablement and he has previously paid the workman Rs. 324 when the disablement was believed to be partial, the workman can now recover Rs. 946, making Rs. 1,170 in all, and the employer has lost Rs. 162. Similarly, if he has induced the workman to accept Rs. 500 in place of the Rs. 1,008 due, and fails to apply for registration, he may have to pay a further sum of Rs. 758 and so lose Rs. 250.

230. WHAT is not so clear is the effect on payments to which the proviso to section 4 (1) does not apply. For example, if an employer has made half-monthly payments to a woman by agreement, and has not filed a memorandum, is he liable to pay half of these amounts over again if the woman files an application for them? This would seem to be the intention of the section, as on any other view the words " shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act" would be otiose. It is suggested, then, that the section should be read as meaning that in all cases where the employer is obliged to register an agreement and fails to do so, he cannot set against his full liability under the Act more than half the sums paid directly to the workman. The Commissioner can remit part or all of this penalty, but it is clear that he is not intended to do so unless sufficient cause is shown for so doing. The law contemplates the exaction of the penalty in the ordinary case, and its remission only in special cases.

231. THE second obscurity in section 29 relates to its effect on payments made prior to the sending of the memorandum. Section 28 does not prescribe any time within which a memorandum must be presented, and payments may have been made (*a*) before any agreement is concluded, and (*b*) after agreement is reached and before the memorandum is sent. The concluding words of section 29 show that the penalty applies in respect of payments made

"under the agreement or otherwise" *i.e.*, it includes all payments to the workman. Can the employer evade the penalty at any stage by presenting a memorandum? If he can, the whole section is rendered virtually meaningless, and some other interpretation should therefore be sought. It is suggested that the words "liable to pay the full amount" must be read as having in view the possibility of a claim by the workman, and that when such a claim is filed, it is no longer possible to avoid the penalty by sending a memorandum. But such an application cannot be filed unless there is some question in dispute which the parties have failed to settle by agreement; see section 22 (I) and paragraph 6 of Form F. Consequently the workman who wishes to claim more compensation than has been agreed upon must first approach the employer again, and the employer could probably take the opportunity then of seeking registration. It is a little doubtful, therefore, if section 29 can be used effectively against an employer who induces a workman to accept less than his rights. The main force of the provisions relating to registration of agreements lies in the fact that no agreement gives the employer protection against a subsequent claim for more compensation unless it is registered.

232. It should be noticed that in any case no penalty can be incurred under section 29 by an employer who pays nothing directly to the workman. The latter part of the section, with its reference to "any amount paid to the workman," does not cover any amount deposited with the Commissioner. So far as liability to penalty is concerned, therefore, the deposit of compensation has the same effect as the presentation of a memorandum. But the mere deposit of the money does not protect the employer against further claims by the workman on the ground that no agreement was reached and the sum is inadequate.

Effect of Registering Agreement

233. The Act nowhere explicitly sets out the full consequences of the registration of a memorandum of agreement. Section 28, which is discussed below, provides that certain agreements which would otherwise be invalid shall be enforceable if they are registered and implies that other agreements are enforceable whether they are registered or not. This is made clearer by section 31, which gives the Commissioner power to recover sums payable under an agreement, a power normally to be exercised on the application of a party. If, however, the claim for recovery were based on an agreement which was required to be

registered under section 28 and had not been so registered, the Commissioner would not enforce the agreement without applying the provisions of section 29. Further, section 22 (1) precludes the workman from making a claim for the settlement of the amount of compensation due unless the parties have been unable to agree on the amount; but if an agreement had been registered after notice to the parties and scrutiny, the Commissioner would naturally refuse to allow a settled question to be reopened on account of a subsequent dispute, save in the most exceptional circumstances such as proved fraud. It should be noted, moreover, that under the second proviso to section 30 (1) no appeal lies where the Commissioner gives effect to an agreement. Thus the ordinary effects of registration are—

(1) to make the agreement enforceable by the Commissioner;

(2) to give the employer complete security against a further claim under section 29 ; and

(3) to protect both parties against the re-opening of the settlement reached.

234. SECTION 28(2) contains a special provision preventing persons from using the provisions of the Indian Contract Act, 1872, or any other law, to render duly registered agreements invalid. This is designed especially to meet the case of workmen under 18. But for this provision agreements with such persons might be declared invalid under section 11 of the Contract Act (IX of 1872). That section is designed to protect persons who may not be capable of protecting their own interests from bargaining away their rights. Here such persons are placed under the protection of the Commissioner, who is responsible for seeing that the workman is not defrauded, and who will naturally exercise special care where young persons are concerned. Section 32 (2) (*f*) and Rule 42 clearly contemplate that all persons who are not minors and who are physically and mentally able to make an appearance should conduct proceedings on their own behalf, and a minor is a person under the age of 15.

CHAPTER VIII

DISPUTED CASES OF DISABLEMENT

The Commissioner

235. THE discussion has hitherto been confined mainly to an exposition of the law and to an explanation of the procedure where the parties are in agreement. But disputed cases are inevitable and their settlement is the business of the Commissioners appointed by the local Government under section 20 (1). In the appointment of special officers employing special procedure and receiving considerable extra-judicial powers, the Act follows American rather than English models. The aim in view is prompt justice, to be secured by prescribing a simpler procedure than that incumbent on Civil Courts and by giving a wider liberty to the Commissioner than Civil Judges enjoy.

236. THE Commissioner is not, in the strict sense, a Civil Court: except in section 23, which confers on him some of the powers of a Civil Court and provides that for one special purpose he shall be deemed to be a Civil Court, the Act never refers to him as a Court. Section 22 (1) begins with the words "No Civil Court," and does not say "No other Civil Court" as it would if the Commissioner were regarded as a Civil Court. While he is a judicial officer and while he must, at some stages, act strictly as such, the rules clearly contemplate his acting in the capacity of a friend and adviser of the parties. In introducing the Workmen's Compensation Bill, Mr. (now Sir) Charles Innes said, "we hope that these tribunals" (*i.e.*, the Commissioners) "will not only settle disputes but will prevent them," and the efficient Commissioner is obviously intended to direct his energies to settlement by agreement whenever that is possible. Normally, of course, settlement is easiest before a formal claim is made, and the Commissioner's advice is generally available to any party anxious to fulfil the law and to avoid a dispute. But even after a claim has been filed, such powers as those conferred in Rule 34, which departs widely from the ordinary civil procedure, can be used to bring the parties to a common point of view.

237. THE Government of India, in a published letter* relating to the appointment of Commissioners, expressed the following views:—"Under the Act, the Commissioner has been invested, in some instances, with wide discretionary powers. He will have complete discretion, for instance, in regard to the distribution of compensation among dependants (section 8). He has power to refuse acceptance of agreements (section 28) and such provisions as those contained in section 6 and section 11 (4) require the exercise of judgment in matters in which the law itself will give him little assistance. The intention of the Act is that the Commissioner should not content himself merely with the decision of such disputes as come before him in his judicial capacity. He should take a part in preventing the occurrence of disputes and should be generally responsible for the protection of the rights of the parties. When a dispute occurs, it will be frequently desirable that he should visit the place of occurrence and settle the matter on the spot."

The Application for Compensation

238. IF the employer refuses to pay any compensation or is unwilling to pay the full amount of the compensation claimed, the workman must proceed under section 22. This section governs all applications to the Commissioner for the settlement of disputes. An application cannot be filed in cases of disablement until an attempt has been made to reach agreement out of court, and every such application must contain a statement of the points on which agreement has been reached, and the points on which the parties cannot agree. [Section 22 (2) (*d*).] In the case of a claim for compensation, if the employer refuses to pay or declines to reply to the workman's requests, the workman's duty of endeavouring to settle the claim by agreement is discharged and he can go to the Commissioners and file an application in the manner prescribed in Rule 19. The application should be on the lines given in Form F. It can be presented to the Commissioner or his authorised subordinate, or sent by registered post. An illiterate workman or a workman who for any other adequate reason is unable to furnish a written application, can have his application prepared under the direction of the Commissioner. [Section 22 (3).] It is, of course, open to the workman to have his application prepared by a legal practitioner or by any private person.

*Letter from the Secretary, Department of Industries and Labour, No. L859 of 4th July 1923.

239. It is worth observing that section 22 covers also applications by the employer, and makes it possible for an employer, when he has declined to agree to pay compensation, to apply to the Commissioner for a decision that he is not liable to pay. Naturally the employer will ordinarily wait for the workman to institute proceedings, but the power to start proceedings himself affords a safeguard against the danger of a claim being delayed to a time when the employer may find it more difficult to repel. Where the view taken by the Calcutta High Court of the meaning of "claim" prevails (this is discussed in paragraphs 242-3), the protection that this possibility offers may be useful in a number of cases.

240. The rules governing procedure are supplemented by certain provisions of the Civil Procedure Code, which the Commissioner is ordinarily required to apply, although he has discretion to depart from them, if the interests of the parties are not prejudiced by his so doing. (Rule 38.) If the application is based on a document, *viz.*, an agreement to pay compensation, in the claimant's possession, he must produce it with the application, and must specify in writing at the same time any other documents he proposes to produce in evidence. (Order VII, rule 14.) All documents not previously produced, on which either party relies, must be produced at the first hearing (Order XIII, rule 1) and documents not mentioned and produced at the proper time will ordinarily not be receivable in evidence (Order VII, rule 18 and Order XIII, rule 2).

241. The Commissioner can reject the application at once if, on examining it, he is satisfied that it discloses no cause of action. Similarly, the application can be rejected if it is insufficiently stamped and the applicant fails to rectify the omission on being given the opportunity to do so. Rejection on either of these grounds will not preclude a fresh application in proper form and time. (Order VII, rule 13.) An application has to be rejected if the requirements of section 10 (1) are not satisfied in respect of notice, or if it is not made within the time prescribed, unless the Commissioner decides to condone the failure.

Limitation of Claims

242. The ordinary period for the limitation of a claim for the recovery of compensation in cases of disablement is fixed by section 10 (1) at six months from the date of the accident. Unfortunately, there is an ambiguity regarding the meaning of the words "the claim...has been instituted" in this sub-section.

The Calcutta High Court has ruled* that the period of six months allowed for the claim to be instituted relates to the claim for compensation made by the workman against his employer and has no reference to the period within which an application for the settlement of the matter can be made. It follows on this view that the workman should approach the employer with his claim within the period specified; and if he does so, there is no limit to the time within which he can approach the Commissioner. On the other hand, the Bombay High Court, although they have not had this issue expressly before them, have treated the period as referring to the time within which application must be made to the Commissioner.†

243. THE Calcutta High Court's decision rests on two main grounds, *viz.*—

(1) THE words "Claim for compensation" have been held in England‡ to refer to the claim made from the employer; the Legislature presumably intended that this meaning should be followed, and the use in section 10 (1) of the word 'instituted" where the British Act has "made" is an "unfortunate substitution" with no real force.

(2) Section 22 distinguishes between an "application for the settlement of any matter by the Commissioner" and a "claim for compensation against an employer;" these cannot refer to exactly the same thing.

The point is thus one on which different views can be taken: but, as the issue has not been directly raised in Bombay, it is not possible to give grounds, which have judicial authority behind them, in support of the view taken there. The writer would, however, with due respect, suggest that, if the question arises in some other province, the following considerations may be regarded as warranting a preference for the view of the Bombay High Court, *i.e.*, for regarding the claim as being instituted when it is filed before the Commissioner.

(1) THE last proviso to section 10 (1) speaks of the Commissioner having power to "admit and decide any claim." No such words as "admit" or "decide" are used with reference

*Abdul Karim *v.* E. B. Railway, LXI Cal. 508.

†In Hogan *v.* Gafoor Ramzan, LVIII Bom. 128, the Court refers to the claim being made at the time when the application was made to the Commissioner. The same assumption is made in Colaba Land and Mill Coy. *v.* Yesoo Baloo Sutar, *Bombay Labour Gazette*, April, 1934, 587, of the same Court. Here the claimant applied to his employer on 25th February, 1933, and to the Commissioner on 13th April, 1933, and the Court observed, "The claim for compensation was not made till the 13th April, 1933."

‡*Cf.* Powell *v.* Main Colliery Co. (1900), A. C., 366, II W. C. C. 29 (majority decision of House of Lords).

to "claim" in the British Act, and the proviso seems to treat the claim as equivalent to the application to the Commissioner. If a distinction was intended, it would be natural to use the word "application" here instead of "claim." See also section 30 (1) (*a*) which speaks of "disallowing a claim."

(2) Section 22 (2) (*b*) requires the applicant to give the date of notice, but he is nowhere required to give the date of application to the employer which, if this is the time of instituting the claim, is required to enable the Commissioner to decide on the admissibility of the case.

(3) A distinction can be drawn between an "application for the settlement of any matter" and a "claim for compensation against an employer" in section 22 without interpreting "claim" as meaning a claim preferred to the employer. The first term would include, for example, an application by the employer for review, for commutation, for settlement of the dispute, etc., the second does not. The distinction between "proceedings for the recovery of compensation" and "claim for compensation" in section 10 (1) is not so easy to draw; but the former term may be regarded as including subsequent proceedings, *e.g.*, an application for action under section 31, and the latter as referring only to the original claim.

(4) The use (once in the main part of the sub-section and twice in the last proviso) of the rather technical word "instituted" seems to point to legal proceedings. The Legislature may have intended by the change to avoid the British interpretation of "claim."

It may be added that the second proviso to section 10 (1) has been inserted since the cause that formed the subject of the Calcutta decision arose. It does not help materially to resolve the doubt, for while by using the word "made" instead of "instituted" it tends to weaken the force of the last argument, by speaking of "the claim *is* made" instead of "was made" it appears to identify the claim with the application to the Commissioner.

Condonation by the Commissioner

244. THE last proviso to section 10 (1) gives the Commissioner power to condone a failure to comply with the requirements of that sub-section if he is satisfied that the failure is due to sufficient cause The words "in due time" apply alike to the giving of notice and the institution of the claim. Otherwise there would have been no comma after "instituted."* Further,

*Jaichand Somchand *v.* Vithal Bajirao, LVII Bom., 150.

"if no notice at all has been given, then notice has not..... been given in due time within the meaning of the proviso."* Thus the proviso applies to cases where the notice has been given late and to cases where it has not been given. *Cf.* section 22 (1) (*b*) which refers to both types of case. Cases where there has been a material defect in the notice can be regarded as cases where no notice has been served. The proviso also applied to cases where the claim has not been made in proper time.

245. WHAT the workman has to explain to the Commissioner if he wishes him to exercise his power under the proviso is the "failure *so* to give the notice or institute the claim," and the word "so" refers to the giving of the notice or the institution of the claim in due time. In the case of the institution of a claim for disablement "due time as provided in this sub-section" means six months after the accident, and in consequence the Bombay High Court has held† that if the workman gives a satisfactory explanation to cover his inactivity during the first six months, any subsequent delay is immaterial. It appeared to follow from this decision, which is based on a decision‡ of the Court of Appeal in England, that once the Commissioner is satisfied that there was sufficient cause for failing to institute a claim in the first six months, he should excuse any further delay, however long it is and whatever the reason for it.

246. BUT having regard to subsequent changes in the Act, before this conclusion can now be drawn, there is a further important question to be considered, *viz.*, the extent of the discretion allowed to the Commissioner under the last proviso to section 10 (1). It might appear at first sight that all that the workman has to do to secure the exercise of the Commissioner's powers is to show that his failure in respect of giving notice or filing a claim was due to sufficient cause. But this would only

*Per Marten, C. J., in Fibre Aloes Factory, Powai *v.* Jaffer Rasool, cited and approved in Jaichand *v.* Vithal Bajirao, *supra*.

†Hogan *v.* Gafoor Ramzan, LVIII Bom. 128.

‡Lingley *v.* Thomas Firth and Sons, Ltd. (1921), 1 K. B. 655, 13 B. W. C. C. 367. Prior to this decision there were observations by Judges of the same Court to the opposite effect. It should be observed that the British Act has "within the period above specified" where the Indian Act has "in due time," and that the British proviso refers only to claims, whereas the Indian one refers both to notices and claims, and the words "in due time" refer to both. The requirement is that notice should be given before the earlier of two dates, and as soon as either of these dates is passed, a failure to give notice in due time has occurred. Consequently, it seems to follow from the decision of the Bombay High Court that when the workman leaves his employment before it is practicable to give notice, he need explain only the failure to give notice before leaving his employment.

be true if the words "shall admit" were substituted for "may admit" in the proviso. But to read "may" as equivalent to "shall" here is illegitimate, for two reasons. There is first the general ground that "may" should not be treated as equivalent to "shall" unless there are fairly compelling reasons for so doing. In the second place, there is a strong argument in the section as it now stands for the view that even when sufficient cause is proved, the Commissioner retains some discretion in the matter.* On the one hand, the second proviso says that on proof of certain facts, the want or defect in a notice "shall not be a bar to the maintenance of proceedings." On the other hand, the third proviso says that if certain facts are proved, "the Commissioner may admit ..... the claim." This big difference in wording becomes entirely meaningless if the Commissioner is bound to admit the claim when sufficient cause is proved, for then these two very different phrases have precisely the same effect. It must be assumed, therefore, that the Legislature intended two different things.

247. THIS is confirmed if a reference is made to the corresponding British provisions. The similar section in the British Act† has two provisos corresponding to part (*b*) of the second Indian proviso and to the third proviso. In each case it provides in identical language for the removal of the bar to proceedings. If the employer's knowledge of the accident is proved, "the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of proceedings;" and if the failure is proved to be due to reasonable cause, "the failure ....shall not be a bar to the maintenance of proceedings." The Indian Act follows the British one in one case and abandons it in the other, and it is essential to attach a meaning to the difference.

248. THE obvious and indeed the only meaning that can be attached to it is that the Commissioner has no discretion in the first case, and that he has some discretion in the other. In other words, unless the workman can produce a sufficient excuse for his failure, no question of waiving the failure can arise; but proof of sufficient cause does not in itself compel the Commissioner to admit the claim if there are good reasons for

*The judgments in Hogan *v.* Gafoor Ramzan, *supra*, appear to support the opposite view. But the argument here given was not then possible, as the second proviso has been added to the Act since that case was decided. So long as the third proviso stood alone, it was possible to hold that the intention was that sufficient cause should always secure the admission of the claim.

†Section 14.

refusing to do so. In the exercise of his discretion, it is suggested that the Commissioner should be guided by considerations of equity. It is noteworthy that the second proviso, unlike the corresponding British provision, does not refer to the case where the employer is not prejudiced, and it is reasonable that the Commissioner should have regard on the one hand to the extent to which the employer will be prejudiced by his waiving the requirements in respect of notice or claim. Thus if a claim is brought so late that the employer, who received no notice at the time, has lost all opportunity of investigating the facts, this would normally justify the Commissioner in declining to exercise his discretion.

"Sufficient Cause"

249. BEFORE leaving this important proviso, some observations may be offered on the meaning of "sufficient cause." Whether any given facts constitute sufficient cause is a question of law,* and in dealing with a rather vague phrase like this, there is a strong temptation to look for guidance to the British decisions on the similar provision in the British Act; and these are numerous. But perhaps the best dictum that can be extracted from them is that of Lord Macmillan in a leading case on this subject:—

> "The decided cases on the subject.....furnish an unhappy instance of history teaching by examples, for the only lesson which they impart is that no one case can govern any other and that each case depends upon its own circumstances."†

Moreover, the words "sufficient cause" do not appear in the British Act which speaks of "other reasonable cause," after citing "mistake" and "absence from the United Kingdom" as two examples of what constitute reasonable causes.

250. GOING back, then, to the words themselves, the main question which they raise is "sufficient for what?" "Sufficient" clearly cannot mean "sufficient to cause this particular workman's failure to act in due time," for the facts of the failure show that the cause, however unworthy, was sufficient for that. Nor

*Halemabi *v.* A. B. Cursetjee & Sons, Bombay Labour Gazette, February 1933, 421; Consolidated Tin Mines of Burma *v.* Maung Tun E, IX Ran. 118.

†In Shotts Iron Company, Ltd. *v.* Fordyce (1930), A. C. 503, XXIII B. W. C. C. at p. 90. In the same case the Lord Chancellor also made a protest against the habit of citing numerous cases and said "I prefer to go back if possible to the words of the statute and not to consider such words through a vista of decisions most of which deal with the facts in the particular case under consideration."

can it mean "sufficient to warrant the Commissioner in using his discretion,"* as the Commissioner's discretion has to be exercised after taking into consideration other factors as well as the cause of failure, and sufficient must be connected with failure: it is the failure that has to be due to sufficient cause. The correct interpretation would seem to be "sufficient in normal circumstances to produce a failure," or in other words, "sufficient to produce failure on the part of a normal workman exercising reasonable care." If this view is accepted, there is probably no very substantial difference between the words "reasonable cause" in the British Act and "sufficient cause" in the Indian Act.

251. THE question of what constitutes sufficient cause must, as has been suggested above, depend on the facts in each particular case and any attempt to formulate general rules would be misleading. A few instances may however be given of types of cases in which there is and is not "sufficient cause." On the one hand, the illiteracy of the workman or his ignorance of the law would not constitute sufficient cause.† The Legislature must have been aware that the majority of Indian workmen are illiterate, and if ignorance of the law were an adequate plea, the protection which the section is intended to give to the employer would become almost illusory. Again, the mere fact that the employer will not be prejudiced by the admission of the claim is not sufficient cause, for that is not a "cause" of the failure; it is an effect.

252. ON the other hand, ignorance on questions of fact may frequently be sufficient to lead the workman to suppose that he will never need to make a claim, and in such cases there will normally be sufficient cause. An example is afforded by the case where the injuries are originally extremely trivial. Workmen in certain industries frequently sustain slight cuts or scratches, and it is possible for any small injury of this kind to lead to serious results. But workmen cannot reasonably be expected to give notice on every occasion when such injuries are sustained.

*This interpretation is mentioned here as certain observations in Jaichand Somchand *v.* Vithal Bajirao, LVII Bom. 150, might be cited in support of it. But the actual "cause" in that case is not very clear and the exercise of the Commissioner's discretion appears to have been motived mainly by the fact that the employer had constructive knowledge of the accident. When the case was decided the second proviso to Section 10 (1) was not in the Act, and the issue in question would now be decided by that proviso.

†Consolidated Tin Mines of Burma *v.* Maung Tun E, IX Ran. 118.

In a Bombay case* a workman had a finger-nail removed and went on working; he developed tetanus on the ninth day following the accident and died on the tenth day. The High Court held that there was sufficient cause for failure to give notice. In all such cases there is a possibility that if notice had been given at once, the employer could have prevented the injury from becoming serious: but where a workman has no reason to believe that he will ever be in a position to claim compensation, this would be sufficient in normal circumstances to prevent a workman from giving notice. *A fortiori*, where during the first six months the workman has no reason to suppose that he need make a claim, his delay in filing the claim is due to sufficient cause. For example, the disablement may not become apparent till the six months have elapsed. Or again the employer may lead the workman to suppose that a claim will be unnecessary by making payments to him for the first six months.†

Procedure on Admission of Claims

253. WHEN the application has been admitted, the Commissioner can, and normally will, examine the applicant on oath, or arrange for that examination. The examination on oath can be made by the Commissioner himself, or by any officer designated by the local Government to whom the Commissioner may send the application. That officer can, if necessary, be authorized to examine the applicant's witnesses at the same time. Where the Commissioner's jurisdiction covers a very large area, and an application is sent in from some distance by post, the latter course saves unnecessary trouble to the applicant, more especially if the claim is one that is likely to be rejected summarily. The Commissioner has then to consider the claim and the result of the examination, and it is open to him to dismiss the application at this stage under Rule 21. For example, if it is clear from the facts before the Commissioner that the applicant for compensation is not a workman, or that the accident did not arise out of his employment, the claim can be summarily dismissed.

254. IF the claim is not dismissed summarily, the Commissioner has two alternatives open to him. He may, under Rule 22, call upon the applicant to produce evidence in support of the application before he calls upon any other party,

*Halemabi *v.* A. B. Cursetjee & Sons, *supra*. In this case Shotts Iron Company *v.* Fordyce, XXIII B. W. C. C. 73, was followed.

†*Cf.* Colaba Land Mill Company *v.* Yesoo Baloo Sutar, *supra*.

or he may at once call upon the opposite party to answer the claim. The former procedure can only be adopted after reasons have been recorded, and the latter procedure should be regarded as more normal and is the procedure followed in most cases. The object should always be the convenience of the parties. If the case appears to be a weak one, which, if certain points of doubt could be cleared up, would require to be dismissed, it may be advisable to proceed under Rule 22. But if the case is not likely to prove inadequate, such a procedure adds considerably to the inconvenience sustained by the applicant.

Summary Inquiry and Local Inspection

255. THERE is, however, another course of action open to the Commissioner, not merely at this stage, but at any earlier or later stage. That is to proceed under Rule 34 which can be used in some cases to end the dispute and save considerable delay and inconvenience. This rule enables the Commissioner to hold an inquiry into the case of an essentially non-judicial kind. He can, at a local inspection or at any other time, make inquiries from anyone likely to know the facts, without recording evidence or administering an oath to any person. Thus he can, on the presentation of a claim by a workman, go to the factory or other place where the workman was injured, or to the employer's office, hold a summary inquiry and advise the parties as to the merits of the case, with a view to bringing them to an agreement. If he succeeds, the agreement can be drawn up, signed and presented for registration then and there, and the parties are much more likely to agree, on the facts at any rate, if they are approached informally in this manner, and if they are surrounded by eye-witnesses of the accident. The Commissioner can have any statements made at such an inquiry reduced to writing, and if the parties reach agreement, he can, under Rule 34 (6), use such statements to justify his acceptance of the agreement. If the parties reach an agreement which he considers he should not accept, he can reject it on the strength of these statements.

256. IF, on the other hand, the parties do not come to an agreement, the inquiry may yet have been of some assistance. It may, for example, result in the parties modifying their claims so as to leave fewer questions at issue. But it is important to note that, if the case then goes on, the Commissioner must proceed to decide the outstanding points in a strictly judicial manner. He must not base his findings on the statements made during

his inquiry; these are not evidence, and his decision must be based on the evidence. The statements, if they have been reduced to writing, can be used, however, for the purpose of examining and cross-examining those making them, if they contradict them in giving evidence. Further, the statements may be useful to the Commissioner in assisting him to elicit facts in evidence. For example, he may find that a witness is omitting to mention an important point contained in a statement and he can then ask the witness for the facts on that point. Or the inquiry may point to a witness who, from the statements, appears to be fully conversant with the facts, but whom the parties have not summoned: the Commissioner can then summon the witness himself.

257. THE summary inquiry contemplated by Rule 34 should not be confused with a local inspection (for which provision is made in Rules 32 and 33) although the two can take place at the same time. A local inspection is intended to enable the Commissioner to examine on the spot the circumstances in which the accident took place. For example, he may require, in order to understand the case, to see a machine, or, in view of a claim that the workman was debarred from compensation by an exception, to examine the safety appliances provided. Where the Commissioner intends to make a local inspection, he must normally give the parties notice, and he must embody in a memorandum the facts which he has observed.

Appearance of Parties

258. IF the case is not summarily dismissed under Rule 21 or Rule 22, the next step is the summoning of the opposite party, *i.e.*, the employer in the ordinary case. He may be called upon to produce his evidence at the same time. Rules 9 to 30 of Order V of the Civil Procedure Code govern the service of summons on the opposite party. They regulate the manner in which a summons has to be served in the ordinary case, and contain a number of special directions for service in particular cases, such as service on Government servants, railway servants, soldiers, etc. The summoning and attendance of witnesses forms the subject of Order XVI. This Order, in addition to prescribing the manner of service of summons (which is similar to that prescribed for the service of summons on the opposite party), regulates the payment of witnesses' expenses, and enables the Commissioner to deal suitably with witnesses who fail to answer a summons. The Commissioner is further empowered to call

witnesses of his own motion, and to call upon the parties to give evidence; in the event of a party declining to do so when required, a decision may be summarily given against him in the case. As a matter of fact, most of the powers which appear to be conferred on the Commissioner by this Order are his, apart from it, under section 23 of the Workmen's Compensation Act.

259. THE employer, when he is called upon to meet the claim under Rule 23, receives at the same time one of the copies of the application which the workman has filed. He is ordinarily required, under Rule 24, to file a written statement in reply to it. This should take up the points mentioned in the claim one by one, and should state clearly which facts the employer admits and which allegations he contests. If the case is one in which the employer wishes to be indemnified by a contractor under section 12(2), he must give notice to the Commissioner of his claim for indemnification at this stage. [Rule 36(1).]

260. ORDER IX of the Civil Procedure Code deals with the appearance of the parties and the consequences of their failure to appear. If the applicant appears on the day fixed for hearing and the opposite party, having been duly summoned, fails to appear, the Commissioner may proceed *ex parte*. If the applicant fails to appear and the opposite party appears, the Commissioner must dismiss the application, except in so far as the opposite party admits the claim. If neither party appears, the Commissioner may dismiss the application. If the opposite party, having failed to appear at the first hearing, appears at a later stage and shows sufficient cause for his non-appearance, the Commissioner may set aside his order, or, if he has not finished the hearing, may allow the opposite party to contest the claim. But an *ex parte* order must not be set aside without notice to the applicant. Similarly, if the applicant has failed to appear and later shows sufficient cause for his failure, the Commissioner can cancel his order dismissing the application. In either case he can pass special orders regarding costs. A contractor or sub-contractor who fails to appear in answer to a claim for indemnification is thereby precluded from contesting any award in favour of the workman as well as any finding that he is liable to pay; but the Commissioners can reopen the issues if he shows sufficient cause for his failure to appear.

261. APPEARANCES need not, of course, be in person unless a party is required to appear as a witness. Under section 24,

any party can be represented by a legal practitioner or other person authorised in writing. Thus the employer can be represented by an official of the insurance company with which he was insured, and the workman can be represented by a trade union official. It may be remarked in passing that the Act offers big opportunities for useful constructive work on the part of trade unions. Rules 42 and 43, which are framed in accordance with section 32 (2) (*f*), provide for the representation of minors or persons who are unable to make an appearance. This is an essentially different kind of representation; it must not be supposed that a person is unable to make an appearance because it is inconvenient for him to appear; the phrase has reference to persons who, by reason of lunacy or other causes, are incapable of conducting their own case. In this case the representative, who is virtually a guardian for the purposes of the case, is appointed by the Commissioner.

Hearing of the Case

262. On the date fixed for hearing, after considering the application and the written statement, and after examining the parties, if necessary, to clear up any doubtful points, the Commissioner proceeds under Rule 25 to frame the issues. The issues are, of course, the distinct questions on which the parties differ, and each issue should be restricted to a single point. Issues of fact have to be distinguished from issue of law. [Rule 25 (2).] The distinction between questions of fact and questions of law is discussed later (see paragraphs 315-6) and is important in view of a possible appeal. See the first proviso to section 30 (1). Further, the Commissioner can, under Rule 26, take up the issues of law first before calling evidence to decide the others. The evidence is, of course, directed to proving facts, but where a certain interpretation of the law appears to be sufficient to decide the case, the Commissioner may first settle the correct interpretation. For example, if the circumstances in which the claimant met with an accident are admitted, and the employer, in addition to denying that the accident arose out of the employment, wishes to prove that the claimant is in receipt of more than Rs. 300 a month, and that he did not in any case receive all the injuries he alleges, it may appear to the Commissioner, that the circumstances do not warrant the inference that the accident arose out of the employment. In that case he might determine this point first; if he decided the issue of

law against the applicant, it would be unnecessary to go on to hear evidence on the facts.

263. UNDER section 20 (3) the Commissioner may call to his assistance persons possessing special knowledge of any matter relevant to the dispute. This enables him to obtain expert advice and guidance from factory inspectors, persons having special knowledge of the trade or business concerned, shipping or mining experts, medical men, etc., during the hearing without having to examine them as witnesses. Such experts will be, in a sense, in the position of assessors, but their function is purely advisory, and they need not attend during the whole hearing of the case; their assistance can be confined to the inquiry into those matters of which they have special knowledge.

264. AFTER the issues have been framed, the case proceeds upon ordinary judicial lines. Section 23 empowers the Commissioner to take evidence on oath, to summon witnesses and to compel the production of documents and material objects. The Commissioner will not normally summon witnesses until the necessary fees and their expenses have been paid (Rule 30) but he can remit the fees in necessitous cases (Rule 31). He may decline to summon a witness if he considers that it is not necessary for the just decision of the case that that witness should appear. Section 25 deals with the manner of recording evidence, which is similar in some respects to that prescribed for Magistrates in summons-cases. A verbatim record of the evidence of every medical witness has to be kept; for other witnesses a memorandum is sufficient. A special rule of evidence relating to cases involving masters and seamen will be found in section 15 (3). This is similar to the rule contained in section 7 (1) (*c*) of the British Act, but follows the wording of section 283 of the Indian Merchant Shipping (Consolidation) Act, 1923, in place of the corresponding British provisions.* Another special rule is embodied in section 18. Subject to any such special provisions the Commissioner, when acting in his judicial capacity, must observe the provisions of the Indian Evidence Act (I of 1872), as he is a Court for the purposes of that Act. Rule 37 contains a special provision designed to simplify procedure where several cases arise out of one accident, by permitting the evidence to be recorded simultaneously.

*On the value of this provision see Report of Departmental Committee (U. K.), 1920, paragraph 51.

265. ANY necessary adjournment of the case is provided for by Order XVII of the Civil Procedure Code, which is made applicable by Rule 38. This Order requires that when the hearing of the case has begun, it must be continued, if possible, from day to day until all the witnesses in attendance have been examined. Under Workmen's Compensation Rule 28, the Commissioner, if he finds it necessary to grant an adjournment, must record his reasons for so doing. The failure of any party to appear at an adjourned hearing may involve the same consequences as those which follow failure to appear at the first hearing. If a party fails to produce his evidence or to carry on the case, it may be decided forthwith. The first two rules of Order XXIII relate to the withdrawal and abandonment of claims. The applicant can at any time abandon the whole or part of his claim. In certain circumstances, and more particularly when the withdrawal is necessitated by a technical defect, the Commissioner can permit a fresh claim of the same nature to be made. If the claim is withdrawn or abandoned without this permission, the applicant is precluded from bringing it forward a second time.

266. THE case, after any adjournment that may be necessary (Rule 28), ends with the judgment, which must be signed and dated by the Commissioner at the time when he pronounces his decision. [Rule 29(2).] In addition to the prescribed findings (with reasons) on the issues in the case, the judgment includes in ordinary cases an order as to any costs incurred. Section 26 gives the Commissioner power to apportion the costs as he thinks fit, subject to any rules that may be framed. The rules in force in the various provinces are given on pages 232 to 278. These lay down the scale of costs, and provide that where the costs do not follow the result of the case, the Commissioner must record reasons for departing from this practice.

Review

267. PROVISION is made in section 6 for the review of certain cases. The word "review" implies a second examination of the case, but in order to obtain review it is not necessary to prove that the claim has already been before the Commissioner. A decision reached by the employer and the workman in agreement is also subject to review. What is implied is that there has been a settlement of some kind, and that fresh facts have since justified a re-examination of the claim. The most frequent cause that gives rise to the need for review is a change in the condition of the workman, and review can be had at any time if a qualified

medical practitioner certifies that there has been such a change. If no such certificate is forthcoming, review can only be obtained on the grounds given in rule 3. Except as provided in this rule, review can be claimed by either party. It should be noticed, however, that section 6 applies only to cases where half-monthly payments are payable, *i.e.*, to cases which are, or which have been treated as cases of temporary disablement. Further, it does not apply to cases in which commutation has taken place.

268. The commonest case giving rise to a right to review which is not mentioned in rule 3 is that of a workman whose disablement, regarded at first as temporary, proves to be permanent. This case is expressly mentioned in section 6 (2). The application for review should be accompanied by a certificate of a qualified medical practitioner certifying the disablement as permanent; and it is as well to get the practitioner to specify the actual nature of the permanent disablement. Compensation has then to be awarded on the scale for permanent disablement, less any compensation already given for the period during which the disablement was regarded as temporary. In such cases the workman can ordinarily bring a fresh application, if he so prefers, instead of applying for review. But an application by way of review is the more regular method of proceeding and in some cases it is the only possible method: see paragraph 272.

269. Of the cases mentioned in rule 3, the first two are cases where there has been a change in the workman's wages. By this is meant the individual wages actually being earned by the injured workman after his injury. Review cannot be claimed on the ground of a rise or fall in the wages of the group to which the workman belongs, unless he has actually participated in that rise. For example, a workman on an incremental scale who was not at work could not claim higher compensation on the ground that his increment would have accrued if he had been at work. But the right to review arises, for example, where a workman who had resumed his work after being temporarily disabled and compensated, is compelled by his injury to stop work again, or where a workman who is still suffering from the effects of his injury returns to light work. Clause (*c*) of rule 3 gives a workman power to compel an employer to go on making half-monthly payments when he has discontinued them without sufficient cause.

270. The last two clauses of rule 3 provide for the variation of the conclusion previously reached where it is shown to have

been erroneous. Clause (*d*) relates to cases where the rate of compensation was "obtained by fraud or undue influence or other improper means." This apparently applies equally to cases where the rate was determined by the parties in agreement and to cases where the Commissioner determined the rate, but the possibility of fraud is naturally much less in the latter case. It may appear anomalous that, in cases of this kind, review should be limited to cases where half-monthly payments are involved. But provision against the possibility of "fraud or undue influence or other improper means" in other cases of disablement is made in proviso (*d*) to section 28 (1), where similar wording is used. Cases where lump sums are paid must come before the Commissioner for registration of the agreement, and he can then withhold registration if the agreement appears to have been improperly obtained.

271. THE reference in clause (*e*) of Rule 3 to "the record" shows that this relates only to cases where the Commissioner has given a decision. The object is to enable an error or mistake in that decision to be corrected; but the Commissioner's power to review his own decision under this clause is limited to cases where the mistake or error is "apparent on the face of the record." The Commissioner is not entitled to revise his findings on points of law or his conclusions on disputed points of fact. The most obvious case to which the clause applies is where, on admitted facts, there has been an error in calculating the rate of compensation. The clause is of course limited by the terms of section 6 and the opening words of Rule 3; so that it does not cover a case where the Commissioner has, on an original application for compensation for permanent disablement, erred in calculating the lump sum due. There is no corresponding provision for the correction of errors in such cases, or in cases of applications by dependants.

272. PROCEEDINGS in review are not subject to the rule contained in section 10 (1) regarding the limitation of claims. They are essentially different proceedings from the "proceedings for the recovery of compensation" contemplated by that subsection. The proceedings referred to there are proceedings in a claim for compensation. An application for review is not a claim for compensation: it is an application made after the claim has been allowed by the Commissioner or by the employer. Further the proceedings referred to section 10 (1) are obviously proceedings instituted by the workman, whereas either party

can apply for review. In England the procedure is similar in this respect; it is governed by section 16 of Schedule II of the British Act, which is framed on similar lines. Rule 4, which is framed in accordance with the terms of section 32 (2) (*h*), enables the Commissioner to pass interim orders suspending half-monthly payments, in whole or in part, during the hearing of review applications. Review cannot be claimed until there has been a failure to secure agreement between the parties. [See section 22 (1.)]

CHAPTER IX

PROCEDURE IN FATAL ACCIDENTS.

Fundamental Differences of Procedure

273. The Act contains a large number of provisions specially relating to fatal accidents. Some of these, *e.g.*, those concerning the circumstances in which compensation is payable, the amounts of compensation and the service of notice, have already been discussed; this chapter deals mainly with the actual procedure applicable to cases where the workman is killed. Before discussing that procedure in detail, some general observations may be offered on the fundamental differences between the procedure in cases of death and that in cases of disablement; these differences constitute a distinctive feature of the Indian Act. Put briefly, the main difference is that, whereas a case of disablement is ordinarily a matter for the employer and the workman to settle, with the Commissioner coming in only if they fail to agree, a case of death is always the concern of the Commissioner. The compensation has to be paid to him, and he is responsible for seeing that it is the right amount; it has to be claimed from him and not from the employer. Direct payment by agreement between an employer and dependants is ruled out.*

274. Moreover, whereas a case of disablement, whether contested or otherwise, involves only one main question, *viz.*, whether the claimant is entitled to compensation, a fatal case may involve two, *viz.*, (*i*) whether the employer should deposit compensation with the Commissioner, (*ii*) if so, which person, if any, should receive that deposit. Then two questions form the subject of what are in conception two different proceedings, although in practice, if both are debated, it is generally convenient to deal with them together. The first proceedings, if contested, correspond generally to a contested case of disablement, and end

*As has been explained earlier, payments in certain cases of disablement can or must be made through the Commissioner; but even in these cases the question of payment is one for the parties to settle between themselves in the first instance.

in a declaration that the employer is not liable or in an order to deposit compensation. The second step consists of what are known as distribution proceedings, when the compensation deposited, whether voluntarily or by order of the Commissioner, is allocated among the possible claimants or, if none establishes a right, is returned to the employer. The employer can contest both stages, or either stage, or neither as he chooses. He may, for example, contest his liability to make a deposit and take no part in the distribution proceedings, or he may make a deposit and contest the claim of any party to receive it.

Definition of Dependants

275. THE object of compensation in fatal cases is to make provision for those who were dependent on the workman, and it is convenient to start with the definition of "dependant," which is given in section 2 (1) (*d*). The possible dependants fall into two groups. A few relations are treated as dependants whether they were actually dependent on the deceased workman or not. These are the workman's widow, his legitimate sons under 15 years of age, his legitimate married daughters and his mother, if she is a widow. No proof of dependency is required from them to enable them to rank as dependants. As will be seen later, the establishment of a person's status as a "dependant" does not in itself give a right to participate in the compensation, when that is payable, unless there is only one dependant. But it gives a right to apply for compensation, and no one other than a person who has established this status can, in any circumstances, receive a share of the compensation.

276. THE relations mentioned in clause (*ii*) of section 2(I)(*d*) only rank as dependants if they were wholly or partly dependent on the earnings of the workman at the time of his death. This does not mean that they must have received help from his last wage payment. It will be sufficient to show that prior to his death the workman had been in the habit of contributing at regular or irregular intervals to their maintenance and that this habit had not been discontinued before his death.

277. UNDER sections 3 (18) and 3 (53) of the General Clauses Act, 1897, father includes an adoptive father and son includes an adopted son, in the case of any one whose personal law permits adoption.* Other adoptive or adopted relationships are not recognized.† Posthumous children stand on the same footing

*In *re* Devi Dutta, XII Lah. 50.
†*Cf.* In *re* Munshi Ram, XII Lah. 658.

as other children; if legitimate they come under clause (*i*) of section 2 (I) (*d*) and otherwise under clause (*ii*). Half-brothers are not brothers within the meaning of section 2 (I) (*d*), and cannot claim to be dependants.* Grandchildren, even if they were actually dependent, are only dependants if they are the son's children and the son is dead, and a grandfather cannot claim if any parent is alive. Where the question is whether a person claiming as a dependant is under 15 or not, his age must be reckoned as it was when the right accrued, *i.e.*, on the date of the workman's death, and not on the date of the accident or the date of the claim.

Deposits in Fatal Cases

278. THE employer who is satisfied that the circumstances of the accident are such that compensation is payable to the dependants, if any, should deposit the correct amount with the Commissioner, using Form A. But, in so doing, it is unnecessary for him to satisfy himself that there are any dependants, or that any particular person who may have approached him in the matter is a dependant. For by making a deposit, the employer does not concede the claim of any person to be a dependant. He can by modification of the concluding paragraph of Form A reserve his right to contest the claim of any person to be a dependant; and if he does not participate in the proceedings for distribution of the compensation the Commissioner has to satisfy himself that the claimants are dependants. If no one establishes his claim to be a dependant the compensation will be returned to the employer. If, however, the employer is satisfied that there is at least one person who is a dependant, he has nothing to gain by contesting the claims of others, for the whole of the money must be given to that dependant or to others.

279. FOR the employer the important point is that the compensation should be paid to the Commissioner and not to the claimants, however good their claim. The only payments that can be made directly to dependants are the advances specified in the proviso to section 8 (1), and funeral expenses. Advances may be made to "any dependant" but must not exceed "an aggregate of one hundred rupees." It is not clear if a hundred rupees can be advanced to each of several dependants. The Act prior to 1934 permitted this, but the safer interpretation from the employer's point of view as the Act now stands is to read it as meaning that advances can be given to only one dependant. The

*In *re.* Maung Kyan, IX Ran. 46.

employer can recover the advances later from the sum allotted to the dependant receiving the advance. If the dependant is question is not allotted any compensation by the Commissioner, the advance cannot be recovered under this Act. The employer should therefore avoid advancing money to a dependant who has not a strong claim. Advances can safely be given to a widow or minor child, as no Commissioner could reasonably pass over their claims.

280. THE employer is also at liberty to defray the funeral expenses and, if he does so, to recoup himself after making the deposit up to a maximum of Rs. 25 in the case of any workman. But the deposit of compensation must be the full sum. Amounts disbursed by way of advances or funeral expenses cannot be deducted before making the deposit. Funeral expenses are in intended to be refunded as soon as the Commissioner has received the deposit and is satisfied that the sum was actually disbursed; *i.e.*, they should be refunded before the distribution proceedings start: see section 8 (4). Advances to dependants, on the other hand, cannot be refunded until the Commissioner has decided how the compensation is to be distributed.

281. THE importance of paying compensation in fatal accidents through the Commissioner arises from the fact that, with the exception of the advances discussed above, no payment to a dependant is "deemed to be a payment of compensation" at all. [Section 8 (1)]. The employer can consequently be compelled to pay the full amount to the Commissioner, whatever payments he has made directly, and he cannot deduct these payments or get them refunded* except to the extent of the advances allowed by the proviso to section 8 (1) and the funeral expenses allowed by section 8 (4). But payments made to the workman before he died can be deducted† under the proviso to section 4 (1) as these are made "during the period of disablement." This prohibition of direct payments is a corollary of the fact that it is not for the employer to decide how the compensation should be distributed among the dependants. For the same reason no agreement with a dependant has any value; and the references to dependants in the original section 28 (1) of the Act were repealed by Act VII of 1924. The employer depositing compensation is entitled to a receipt in Form B and subsequently, if he so desires, to a statement in Form C. See section 8 (4) and Rule 6.

*The observations to the contrary in. In *re* Guddai Mutayalu VII Ran. 600 relate to the Act as it stood prior to 1929; section 8 (1) did not then forbid compensation being paid otherwise than through the Commissioner.

†Except in Burma: see paragraph 145.

282. THE Commissioner receiving an inadequate sum as a deposit for a fatal accident is empowered by section 22A to call for an additional deposit. This action can be taken at any time. If there has been a clear error in calculation, the Commissioner will presumably enforce the additional payment as soon as he is satisfied on this point. But if there is any difficulty in determining the amount due, *e.g.*, if there is doubt as to the workman's wages, it will ordinarily be the better course to defer such action until the dependants have appeared, and to make the award after they have been heard.

Reports of Fatal Accidents

283. THE employer in certain cases, whether he pays compensation or not, is obliged by section 10B to send in a report of fatal accidents occurring on his premises. This section applies in the first instance to cases where notices of fatal accidents are required under other Acts. It thus applies to factories falling under the Factories Act; for section 30 of that Act requires managers of such factories to send notices of fatal accidents. It also applies to mines; see section 20 of the Indian Mines Act, 1923, which lays a similar obligation on the owner, agent or manager of a mine.

284. IT appears to apply also on railways, for section 83 of the Indian Railways Act, 1890, requires railway administrations to send notices of all fatal accidents. It is true that in this case, the duty is not imposed on the railway administrations in their capacity as employers. They have the same obligations in respect of passengers, for example. But they are employers, and it should be noted that section 10A is not limited to accidents occurring to workmen. It would seem therefore that railway administrations and the station-masters or other railway servants specified in section 83 of the Railways Act should send the report required by this section in the case of all fatal accidents occurring on a railway. The Factories Act and the Mines Act also require notice of fatal accidents to be reported whether workmen are killed or not. The intention here evidently is that the Commissioner should get reports of all such occurrences, and should take no action where he is satisfied that the persons killed are not workmen.

285. ON the other hand, it is submitted that section 10B(1) does not relate to cases where a person who happens to be an employer is under a general obligation to report cases of death, *e.g.*, where householders or others are required by municipal or

public health acts to send reports. The law must be one specifically requiring notice of accidents as such. On this view, a private employer, whose servant was accidentally killed and who had to report all deaths, from whatever cause arising, on his premises would not on this account be obliged to report the death to the Commissioner, even though the servant happened to be a workman, unless of course he was covered by sub-section (2) of section 10B.

286. THE local Government is empowered by that sub-section to extend the requirement to premises not covered by sub-section (1),† and it can, in virtue of the proviso to sub-section (1) permit any employers or persons acting on their behalf to send the notices to the authority to whom the other law requires it to be sent.* Thus, where the local Government has granted permission by rule, a factory manager can send the notice to the factory inspector, a mine manager to the mines inspector, a railway administration to the local Government and the Government Inspector, and a stationmaster to the Magistrate and police-officer. The notice must in all cases be sent within seven days, the days being reckoned here from the day of the deceased's death. The obligation is limited to cases where the accident occurs on the premises; accidents occurring elsewhere need not be reported, even if they arise out of and in the course of employment. But accidents occurring on the premises must be reported even if the death occurs elsewhere. Failure to send a report is punishable with fine under section 18A(1).

287. THE report must give "the circumstances attending the death;" where a form has been prescribed* for the report, this must be followed. The person sending the report is not obliged to make any observations on the liability to pay compensation [*cf.* section 10A (1)], and if there is any room for doubt, he would be well advised not to do so until he has consulted his insurance company or legal adviser. But if there are facts which clearly render him free from all liability, *e.g.*, the fact that the deceased was not an employee at all, but a stranger, the mention of such facts may assist the Commissioner in deciding not to issue a notice under section 10A and so save the employer further trouble.

Statements regarding Fatal Accidents

288. SECTION 10 A gives the Commissioner a limited power to take the initiative in fatal accidents. The receipt of a report

*No form has been prescribed as yet by any provincial Government.

†Such an extension has been made in the Punjab: see page 271.

*See Central Provinces rule on page 256 which, however, does not appear to leave to the employer the option allowed by the section.

under Section 10 B, information from a factory or mine inspector or from some other source may indicate to him that a workman has been killed by accident arising out of and in the course of employment. In such cases, whether the accident was one occurring on the employer's premises or not, the Commissioner can serve a notice on the employer requiring him to submit a statement in the form prescribed by the local Government.

289. THIS form* requires, in addition to the circumstances attending the death, a statement regarding the liability of the employer. He must say whether, in his opinion, he is liable to deposit compensation or not. The liability to deposit compensation arises in all cases in which, if there were dependants, the employer would be liable to pay, *i.e.*, the fact that there are no dependants does not relieve the employer of liability to make a deposit. It is, therefore, entirely unnecessary for him to make any inquiry at this stage into the question of whether there are dependants or not; the relevance of this issue arises at a later stage and if there are no dependants, the employer will get his money back. He does not, by admitting liability to make a deposit, concede the claim of any person to be a dependant.

290. THE statement must be filed within 30 days of getting the notice. This gives the employer adequate time to investigate the circumstances, to consult his insurance company if he insured, or to take legal advice, and to decide on the tenor of his reply. If he is satisfied that the claim is a sound one, he should admit liability and make a deposit and this can best be sent with the statement which will still be required. But if he has any adequate lines of defence, he is required by Section 10 (3) to indicate them. If, at a later stage, there is a contested case, the employer is not legally precluded from putting forward a fresh line of defence there; but the fact that he had not disclosed it at this stage would tend to weaken its force in many cases. The grounds should be stated briefly but clearly, *e.g.*, that the deceased was not a workman, that the deceased was not in the signatory's employ, that the accident did not arise out of the employment, etc. It should be noted that the fact that the accident falls under the exceptions in proviso (*b*) to Section 3 (1) is not a valid defence.

291. THE Commissioner can then communicate with the dependants. He may inform them that it is open to them to prefer a claim, and may give them such further information as he thinks fit. This information may relate, for example, to

*Under the various provincial rules (see pages 232 to 278) the employer will receive a copy of the Form when he gets the Commissioner's notice.

anything mentioned in the employer's statement or to any points of law. The Commissioner is thus placed in a somewhat delicate position, for he would hardly be justified in issuing a notice unless he had come to the conclusion that there was a *prima facie* case. But he may have to adjudicate later on issues arising between the employer and the dependants, and must not lay himself open to the suspicion of prejudice. It is suggested that he should confine himself to statements of fact which are either admitted by the employer or strongly established by other information in his possession and to unimpeachable statements of law. If the employer considers that any observations made by the Commissioner in communicating with the dependants show a definite bias against himself, *e.g.*, if statements are made without sufficient grounds indicating that the employer's version is inaccurate, the employer can approach the local Government for an order of transfer to another Commissioner under section 21 (5) of the Act. It seems desirable that where a Commissioner makes any observation of fact that is not supported by the employer's statement, he should indicate the source of his information. There may be a valid objection to his saying that the employer's assertion that the accident happened in a certain manner is untrue; but the Commissioner can legitimately say, for example, that the employer's report to the factory inspector stated that it arose in another way, or that the factory inspector investigated the accident and reported that it was caused in such and such a manner.

292. INFORMATION can apparently also be given by the Commissioner at a later stage than the issue of the original information under Section 10 A(4). But no steps can be taken under that sub-section on the mere receipt of a report under Section 10 B; the employer must be given an opportunity to send a statement, and must have disclaimed liability. If the employer fails to send a statement on being required to do so, he can be prosecuted and convicted under section 18 A(1); but the Commissioner cannot act under section 10 A(4).

Application by Dependants

293. IF the employer does not admit his liability to deposit compensation, the Commissioner cannot enforce a deposit, even though he considers the reasons given for disclaiming liability to be entirely unsound. Further proceedings can only be instituted by a person or persons claiming as dependants. The claim (see Rule 8 and Form G) takes the form of an application

for the issue of an order to deposit compensation, and application can be made jointly if desired by more than one dependant. [This is clear from proviso (*a*) to Rule 8 (2).] It should be observed that a dependant, unlike an injured workman, is under no obligation to approach the employer in the first instance, for section 22(1) does not apply to dependants; consequently Form G, unlike Form F, contains no reference to efforts to secure a settlement by agreement. This is in consonance with the fact that no agreement between an employer and dependants has any force (see paragraph 281).

294. On receiving the application, or at any later stage before he frames the issues, the Commissioner may call under section 8 (4) on other dependants who are not parties to the application to join in it by appearing before him on the appointed date. This step is not obligatory, and the Commissioner, in deciding whether or not it should be taken, will ordinarily be guided by the relationships of the dependants applying and such information as he may be able to obtain regarding other dependent relations. Thus where the widow and children apply and the Commissioner has ascertained that there were no other members of the deceased's family living with him, he may consider it unnecessary to issue a notice under proviso (*a*) to Rule 8 (2). It is worth observing that section 8 (4), which deals with the case where compensation has been deposited, gives the Commissioner the choice between calling on every dependant or none. On the other hand, proviso (*a*) to Rule 8 (2), which deals with cases where there has been no deposit, gives him liberty to call on some dependants and not on others. He can, for example, refrain from calling on children whose parents have been called, or have appeared.

295. In respect of limitation, the period of six months runs in fatal cases from the date of the workman's death and not from the date of the accident. [Section 10 (1).] In the case of masters and seamen being killed, the period of limitation commences to run from the date of the receipt of the news of death by the claimant, and if the ship has been lost with all hands, a period of eighteen months is allowed from the date when the ship was, or is deemed to have been, lost.* [Section 15 (2).] In other

Cf. section 174 (2) of the British Merchant Shipping Act, 1894, by which a ship which has not been heard of for 12 months, in certain proceedings "shall.... be deemed to have been lost with all hands on board, either immediately after the time she was last heard of, or at such later time as the court hearing the cause may think probable."

respects the procedure after the employer has been cited is, unless the employer admits liability, similar to that for disputed cases of disablement, which has been discussed in Chapter VIII.

Distribution Proceedings

296. WHEN compensation has been deposited by an employer, either on his own initiative, or in pursuance of section 10 (2), or in admission of an application by a dependant, or after a decision by the Commissioner, the deposit of the money is, followed by distribution proceedings. This includes the determination of two questions, *viz.*, who are dependants and what share, if any, of the compensation each dependant should get. In the case where the dependants apply for an order to deposit and the employer contests their claim on other grounds than the plea that they are not dependants, the Commissioner ordinarily deals with the question of distribution at the same time as the other issues are decided. But the distribution proceedings are essentially subsequent to a decision on the other issues, and the Act, strictly interpreted, gives the Commissioner no authority to enter on distribution proceedings until he has actually received the deposit. [Sections 8 (4), 8 (5).]

297. RULE 39 relates to the procedure applicable to distribution proceedings after a deposit has been made. It is generally similar to that followed in other types of case, but as Rules 23 and 24 are not made applicable there is no "opposite party" and no written statement need be filed. If, however, the employer making the deposit has applied to be a party to the distribution proceedings, it is suggested that he will be in the position of an opposite party and should present a written statement giving the grounds on which he contests the claimants' title to be dependants. Rule 39 implies that there are dependants, and if the employer maintains that there are none, there is more than "apportionment of compensation" involved.

298. IF the Commissioner finds that there is any relative specified in clause (*i*) of section 2 (1) (*d*), or that there is any relative specified in clause (*ii*) who satisfies the conditions of that clause, he must distribute the whole of the compensation after allowing for funeral expenses and advances. He has, however, complete discretion under section 8 (5) in the matter of the actual apportionment of the sum. He can give it all to one dependant, or he can divide it among two or more as he thinks fit. But equity and the general principles underlying the Act clearly demand that it should go, as far as possible, to those of the

dependants who were actually dependent on the deceased, and the allocation should bear some relation to the extent of their dependence. Thus although the relatives in clause (*i*) of section 2 (1) (*d*) do not need to prove dependency in order to establish their status as dependants, the Commissioner may find it necessary to inquire into the extent of their dependency in order to reach a fair decision regarding the apportionment of the compensation. A dependant who has not joined in the application may nevertheless be awarded compensation, if the Commissioner thinks fit; [Rule 8 (3)].

299. COMPENSATION, after it has been deposited, is ordinarily disbursed at once to the dependants to whom it has been allotted. But section 8 (7) gives the Commissioner authority, in all cases where he awards compensation to a woman or to any person who is under 18 years of age or is under any other legal disability, to invest the sum or deal with it otherwise for the benefit of the person to whom it is allotted. Thus he could use it to defray the living expenses of the dependant, paying it out in instalments, or to educate the dependant, or to purchase land for him. If the money is invested, the Commissioner is limited to the investments named in Rule 10. When money has been distributed the employer is entitled, under section 8 (4), to a statement showing how it has been spent.

Subsequent Applications by Dependants

300. EVEN after the decision of a contested case, dependants can in some cases make claims. A dependant who was served with a notice to appear under Rule 8 (2) and failed to do so, cannot claim thereafter that the employer is liable to pay compensation. But if the Commissioner has found the employer so liable, he can claim that he is a dependant and that his claim to share in the compensation should be considered. *A fortiori* a dependant who has not been served with a notice can make a claim later and can have the question of the employer's liability re-opened. If the Commissioner has refunded the deposit-money under the impression that there was no dependant, this will not prevent him from calling on the employer to redeposit the amount.* If the Commissioner has distributed the money, and a specially deserving dependant appears subsequently, he can vary the distribution under section 8 (8), after giving an opportunity to other dependants affected to show cause.

*In *re* Guddai Mutayalu, VII Ran. 600.

301. SECTION 8 (8) cannot be used to recall any money actually paid to a dependant. But in a number of cases sums are invested under section 8 (7), and a Commissioner has the right in such cases to withdraw a sum standing to the credit of one dependant and assign it to another. Similarly sums paid to a guardian on behalf of a dependant can apparently be recovered; section 8 (8) speaks only of sums paid *to* a dependant, and unlike section 8 (9) does not include sums paid *on behalf* of a dependant. It is suggested, however that as section 8 (9) provides for recovery under the Act only where the money has been secured by improper means, the Commissioner should not order repayment by a guardian, except where improper means have been used.

302. SECTION 8 (9) appears at first sight to confer a general power to recover money whose distribution has been secured by fraud, impersonation or other improper means. But as it relates only to cases when the Commissioner acts under section 8 (8), it is submitted that it does not override any part of that sub-section. On this view, it is in no case possible to recover money actually paid to a dependant, and sub-section (9) can only be used where the money has been paid to a person other than a dependant. It can thus be used to recover compensation from a person receiving money on behalf of a dependant or from a person who was awarded it as a dependant and is subsequently found not to have been a dependant. Except as provided by sub-sections (8) and (9) of section 8, a Commissioner cannot revise his orders in a fatal case. The power of altering a mistake in the calculation of compensation, conferred by Rule 3 (*e*) in cases of temporary disablement, does not extend to other cases.

Death following Disablement

303. WHEN a workman who has obtained compensation for disablement dies as a result of injuries received in the accident, a fresh cause of action arises. Whether the workman has been in receipt of half-monthly payments for temporary disablement or has received a lump sum for permanent disablement, the method of procedure is for the dependants to file a fresh application under section 22 (2). Section 6 (2) cannot be invoked in a fatal case. Under section 10 (1) a fresh period of limitation starts from the date of the death, so that, although a long period may have elapsed between the accident and the death, the dependants are in no way prejudiced.

304. If the workman has secured substantial compensation for disablement prior to his death, it will not always be possible for the dependants to obtain a further sum.* In some cases the compensation paid for permanent disablement will exceed the sum that could have been claimed on account of the death of the workman. For example, a man on Rs. 25 a month who is permanently and totally disabled gets Rs. 1,134; but if he is killed, his dependants get only Rs. 810. In the case of minors even larger differences are possible. But if the money has been paid for permanent disablement, and if the workman dies, the employer will not be able to recover anything. The Bill, as originally introduced, enabled him to do so, but the provision for this was deleted in the Legislative Assembly. Where the results of an accident are doubtful, *e.g.*, in the case of a man in a very critical condition, it is suggested that the Commissioner is justified in postponing his decision for a short period, in order to enable himself to come to an accurate finding as to the result.

*This is based on the view of the law taken in paragraphs 145-6 and does not apply to Burma, where further compensation can always be claimed.

CHAPTER X

TRANSFER, RECOVERY, REFERENCES AND APPEALS

Transfer

305. NORMALLY a case must be disposed of by the Commissioner appointed for the area within which the accident took place. [Section 21.] If there is more than one Commissioner having jurisdiction in the area, the distribution of work between them is regulated by orders passed by the Local Government under section 20 (2). In the case of masters and seamen, application should be made to the Commissioner for the area within which the owner or agent of the ship carries on his business Cases may arise, however, where it would suit the convenience of the parties to have the proceedings transferred to another Commissioner. Provision is accordingly made for the transfer of cases in section 21, and in Rules 40 and 41. Transfer by a Commissioner may be of two kinds—transfer for report and transfer for final disposal.

306. THE Commissioner can transfer for report in any case whether the parties desire such a transfer or not. In a transfer for report, all that is done is to obtain from the second Commissioner a report on facts which he may be in a better position to ascertain than the first Commissioner. For example, if a workman is said to be lying critically ill within the jurisdiction of the second Commissioner, the latter may be in a better position to determine the condition of the workman than the Commissioner deciding the case. The first Commissioner must send the second a questionnaire, confined to questions of fact and raising no questions of law. The second Commissioner will then inquire into the questions referred to him, and send back the case with his findings on the different points. The findings of fact must be accepted by the Commissioner who transferred the case.

307. TRANSFER for final disposal can ordinarily be made only if both parties agree. If either party objects to the transfer the consent of the Local Government is required before the case can be transferred to another Commissioner in the same province;

a transfer outside the province requires the sanction of the Government of India. The only exception to this rule is the case of the actual payment to a workman of money due to him or the distribution among the dependants of a lump sum, *i.e.*, after a fatal accident. Once the compensation has been adjudged to be due, the employer will not usually have much further interest in the proceedings. [See paragraph 278.] If the employer desires to contest the claims of the dependants to be such, the Commissioner has to take that claim into consideration before ordering the transfer of distribution proceedings. In such cases, it will probably be held that the proceedings cannot be regarded simply as a "matter relating to .... the distribution among dependants of a lump sum," [Section 21 (2)], for it has first to be shown that there are dependants.

308. If this view is correct, the Commissioner cannot transfer such cases without the employer's consent until it is proved that there is at least one dependant. In the ordinary distribution case, however, only the dependants will be interested, and a transfer may frequently be desirable in their interests. For example, if a worker from the United Provinces has gone to a Bengal Mill to work and is killed there, it may be much more convenient for the distribution to be determined in his home district in the United Provinces where the dependants may be living. Money sent for distribution or for payment to a workman has to be transmitted as provided by Rule 41.

309. Section 21 (5) confers on the Local Government a general power of transfer from one Commissioner to another. Except that such a transfer must be within the province, there are no limitations on this power, and it extends to any kind of proceeding before a Commissioner and can be exercised at any stage. Where a party has good grounds for asserting that he is not likely to get a fair hearing before a particular Commissioner he can apply to the local Government to direct a transfer. An order of transfer is not necessary where there is a change in the officer holding a post of Commissioner; the new officer succeeds to the rights and duties of the old one in respect of any pending case.

310. Section 35 makes provision for the transfer of compensation money to persons to whom it is due who may be abroad or in an Indian State or may be about to go out of British India. It also provides for the administration for the benefit of persons residing or about to reside in British India of money

awarded under other workmen's compensation laws. In the former case the transfer is limited to sums actually "paid to a Commissioner .... for the benefit of any person": money deposited by an employer in a fatal case cannot be sent abroad until the distribution proceedings have been concluded. The procedure in transfers to and from British India is regulated by the Workmen's Compensation (Transfer of Money) Rules, 1935, which are reproduced on pages 207 to 209.

Recovery of Compensation

311. SECTION 31 confers upon the Commissioner powers for the recovery of compensation. "Recover" in the section is used in a different sense from "recovery" in section 10(1). That section refers to proceedings instituted by a workman to recover compensation which he believes to be due to him; section 31 refers to recovery by a Commissioner of compensation actually admitted or adjudged to be due. Application can be made by a workman to the Commissioner under section 31, but the workman will have to show that the compensation is due either under an agreement with the employer or under an order already passed by the Commissioner. The terms of the section make it clear that agreements between employers and workmen for the payment of compensation are to be enforced by the Commissioner; it follows from section 19(2) that they cannot be enforced by Civil Courts.

312. RECOVERY is to be effected in the manner prescribed for the recovery of arrears of land revenue. Section 5 of the Revenue Recovery Act (I of 1890), which is referred to in section 31, reads as follows:—

> Where any sum is recoverable as an arrear of land revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land revenue which has accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act as if the sum were payable to himself.

"Collector" here means the chief officer in charge of the land revenue administration of a district.

313. REFERENCE may conveniently be made here to section 9, which confers a certain amount of protection on compensation which has been adjudged due to workmen. It prevents the assignment and attachment of compensation, and thus operates to prevent the workman from selling his right to half-monthly payments to a money-lender, and in discouraging money-lenders from lending money on the security of compensation. It also prevents the attachment of money which is in deposit with the Commissioner. The section does not apply to money that has actually been given to the workman; it is impossible to distinguish then between money given in compensation and money which the workman may have acquired in other ways.

References to High Court

314. SECTION 27 gives the Commissioner power to refer a question of law to a High Court. As the words "decide the question" show, the power is to be used only when a definite question has arisen in a case before him. The power has been sparingly used and occasions when it can usefully be worked are infrequent. It is suggested that it should be limited to cases where there is a substantial legal issue involved on which no guidance is already available (and such issues are few), and that it should not be used when there is a possibility of an appeal on some other question. Such a legal issue may arise when no appeal is permissible, and references may have the result of clarifying points of law which would not otherwise come before a High Court. The Commissioner submitting a reference should set out the issue clearly, with any facts that are relevant to its determination and should indicate how the doubt as to the law arises. It is suggested that references should not be made without consultation of the parties and the consent of at least one of them.

315. IT is important for the purposes both of this section and of section 30 to draw a distinction between questions of fact and questions of law. Rule 25 requires the Commissioner to distinguish in all cases between issues of facts and issues of law, and Rule 26 refers to this distinction. Generally speaking, issues of fact are issues which can be determined without the need of interpreting any provision of the Act or any other legal provision; issues of law are issues which cannot be so determined. Looking at the distinction from another point of view, questions of fact are questions which are decided solely upon the evidence. questions of law are questions which are essentially independent of the

credibility of any part of the evidence; they involve the conclusions to be drawn from the facts which may be established by the evidence.

316. THIS may be illustrated by a few examples. Where a workman claims that compensation is due because the accident in which he was injured arose out of his employment, any questions regarding the circumstances in which he came to be injured and the nature of the injuries he received are questions of fact. Whether, in the circumstances, there was an accident and whether on the view taken of the facts, that accident arose out of the employment, are questions of law. Again, if there is a dispute as to whether a claimant is a workman, all questions regarding the actual work he does are questions of fact; when the nature of his work is determined, the question of whether that constitutes him a workman as defined by the Act is a question of law. When a person claims to be a dependant, the nature of his relationships and his financial transactions with the deceased workman are questions of fact; whether the facts bring him within the list of relations given in clause 2 (1) (*d*) is a question of law and so also is the question of whether the financial relations constitute partial or total dependence. When a Commissioner is asked to exercise a discretion conferred by the Act, the circumstances put forward as the grounds for exercising that discretion are ordinarily facts; but it is an issue of law whether he should, in the circumstances as he finds them, agree to exercise his discretion. For this involves a particular view of the intention of the Act, and is independent of the credibility of the evidence.

Appeals

317. IN certain cases an appeal can be made against the order of the Commissioner. The provisions governing appeals are contained in section 30. The appeal lies to the High Court, which here means " the highest Civil Court of appeal in the part of British India in which the Act .... operates." [Section 3 (24) of the General Clauses Act (X of 1897).] The period of limitation for an appeal is fixed by section 30 (2) at sixty days. Under section 30 (3) this is subject to the provision contained in section 5 of the Limitation Act (IX of 1908) which reads :—

> Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable by any enactment or rule for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or

applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation:—The fact that the appellant or applicant was misled by any order, practice, or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

318. THE orders against which an appeal can lie are detailed in section 30 (1). Generally speaking, appeals are restricted to cases where lump sums are involved. Cases relating to temporary disablement, where half-monthly payments are involved, are not subject to appeal, until the question of commutation arises, or unless they are the subject of agreements which require to be registered. It may happen that an order is first passed by the Commissioner granting compensation in the form of recurring payments for temporary disablement, and that later, when the injuries prove to be permanent, he may allow a lump sum. An appeal does not lie against the first order, but it does lie, in some cases, against the second order, and in the appeal it is apparently possible to raise questions decided at the time of passing the first order, *e.g.*, the High Court can examine the question of whether the accident arose out of the employment or not. But if they decide that the accident did not arise out of the employment, and that, in consequence, no compensation had ever been payable, this does not affect the validity of the first order, and payments made under that order do not require to be refunded.

319. WHERE the appeal is against an order granting commutation under section 7, it is suggested that the question of whether the right to half-monthly payments exists is not open to examination; all that has to be decided is whether the order granting or refusing commutation was correct or not. But the sums payable as commutation are seldom large enough to admit of an appeal. An order postponing a decision on an application for commutation, passed under rule 5 (2), can hardly be regarded as an order refusing to allow redemption; if this view is correct, no appeal lies against such an order.

Conditions Governing Appeals

320. THE mere fact that an order of the Commissioner is one of the orders specified in clause (*a*) to (*e*) does not necessarily confer a right to appeal. There are two conditions that must

first be satisfied in all cases. One is that there must be a substantial question of law involved in the appeal. The distinction between questions of law and questions of fact has been discussed above. (Paragraphs 315-6.) But reference may be made here to a question of law which concerns appeals particularly. This is the question whether there was evidence on which the Commissioner could have arrived at any particular finding of fact. If there is no evidence to support a finding of fact, on which the Commissioner's final decision is based, it will probably be held by the High Courts that a substantial question of law arises, and that the Commissioner's decision should be set aside, if it cannot be supported on other grounds. If there is some evidence to support a finding of fact, an appeal cannot be admitted on the ground that the weight of the evidence was against that finding or that the evidence was inadequate; but if there is no evidence, an appeal can be admitted and will ordinarily be allowed.* For an appeal to lie, there must be a *substantial* question of law involved, *i.e.*, not a trivial technicality.

321. THE Calcutta High Court has ruled that if a substantial point of law arises, the High Court is entitled to consider the case on points of fact as well as on points of law.† On the other hand the Bombay High Court has tended to regard the Commissioner's finding on points of fact as final and to limit the appeal to points of law.‡ This latter view corresponds with the law in Great Britain where, provided that there is some evidence on which the original Court could arrive at a finding of fact, the appellate Court accepts that finding and does not weigh the evidence supporting it. It is possible that the framers of the Act intended to follow the British precedent; but it is suggested, with due respect, that the first proviso to section 30 is more naturally interpreted in the sense assigned to it by the Calcutta High Court. It rules out an appeal where there is no substantial question of law involved. But if there is a substantial question of law involved, the bar is removed and the proviso does not appear to the writer to curtail the right of the appellate Court to satisfy itself

*This is the British law: the issue has not been expressly raised under the Indian Act, but the observations of Marten, C.J., in G. I. P. Ry. *v.* Kashinath, LII Bom. 45 support the view here taken.

†Gourishankar Bhakut *v.* Radhakissen Cotton Mills, LX Cal. 421.

‡"Under proviso to S. 30 of the Workmen's Compensation Act, VIII of 1923, we have to take the finding of the lower Court as correct, and to see whether there is any substantial question of law involved in the case." Ahmedabad Cotton Mill and Co. *v.* Rai Budhian BLR XXIX at p. 350. In G. I. P. Ry. *v.* Kashinath, LII Bom. 45, the Court addressed itself to the question of whether there was evidence on which the Commissioner could arrive at a certain finding and not the question of whether the finding was the correct one on the evidence.

as to the correctness of all the findings on which the Commissioner's decision is based.

322. THE second condition is that the amount in dispute in the appeal should be not less than Rs 300. That is, no appeal will be admitted unless, if completely successful, it would involve the transfer of at least Rs. 300. An exception is made in the case of the refusal of the Commissioner to allow redemption of half-monthly payments, for in this case it is not usually possible for the appellant to state the amount involved. In other cases, there should be no difficulty. It is, of course, open to the High Court to vary the decision of the Commissioner in such a way that less than Rs. 300 is transferred, but the sum at issue in the appeal must exceed the limit named.

Miscellaneous Provisions Relating to Appeals

323. UNDER the second proviso to Section 30 (1) no appeal can be made if the parties have agreed beforehand to abide by the Commissioner's decision. This offers a simple method of avoiding unnecessary litigation by making the Commissioner a final arbitrator on all the points at issue. The procedure to be followed where one party expresses a desire to abide by the Commissioner's decision will be found in Rule 35. Again, no appeal is possible if the Commissioner's order gives effect to an agreement come to by the parties. This appears to be intended primarily to cover consent orders, *i.e.*, those cases where agreement is reached in the course of the proceedings before the Commissioner and it can possibly be held to apply only to such cases. Cases where the Commissioner gives effect to an agreement, reached before he is approached, by recovering in accordance with Section 31 compensation payable under it, are not appealable in any case; for there is no reference to orders for recovery in the main part of Section 30 (1). Cases where the Commissioner registers an agreement are expressly included in clause (*e*) of Section 30 (1), and the concluding words of the second proviso cannot be regarded as withdrawing the right conferred by that clause, except where the registration was by consent.

324. AN employer appealing against the award of a lump sum must, before filing his appeal, deposit the amount awarded by the Commissioner with that officer, and secure from him a certificate to the effect that the sum has been deposited. The Commissioner under Section 30A can withhold payment of the sum to the workman, and he must withhold it if the High Court

so directs. It is suggested that, unless the appeal is obviously frivolous, the Commissioner would not ordinarily be justified in disbursing any substantial sum, as by so doing he would tend to nullify the High Court's decision in advance. It is worth observing that the last proviso to Section 30 (1) and Section 30 A were substituted by the Legislative Assembly for proposals to allow the Commissioner to disburse a small sum to dependants in need. If a dependant to whom compensation was awarded has been left destitute and the Commissioner considers that the appeal has little prospect of success, he will probably be justified, in the absence of an order from the High Court, in disbursing small amounts to such a dependant.

325. In those cases which are brought by seamen serving on British or other ships registered outside India under the special stipulations included in the Articles of Agreement for Lascars, no appeal ordinarily lies. This is because the proceedings are not technically proceedings under the Workmen's Compensation Act at all. Stipulations represent an arrangement outside the Act by which the employer agrees to treat the seamen for purposes of compensation as if they come under the Act and to accept the arbitration of the Workmen's Compensation Commissioner in the event of a dispute. The stipulations, however, do not operate to destroy the rights of the seaman under the Act (see Section 17), so that a seaman included in item (*vi*) of Schedule II will, if he is injured in territorial waters, have the full rights conferred by the Act, including the right of appeal.

THE WORKMEN'S COMPENSATION ACT, 1923

(VIII OF 1923)

(*As amended up to the 1st March* 1936)

CONTENTS

CHAPTER III

Commissioners

CHAPTER IV

Rules

ACT No. VIII of 1923

An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.

Whereas it is expedient to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident; It is hereby enacted as follows:—

***Reference in commentary:** paragraph **59.**

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (*1*) This Act may be called the Workmen's Compensation Act, 1923.

(*2*) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas.

References in commentary: paragraphs **9, 35-6.**

(*3*) It shall come into force on the first day of July, 1924.

Reference in commentary: paragraph **6.**

Definitions.

2. (*1*) In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "adult" and "minor" mean respectively a person who is not and a person who is under the age of fifteen years;

References in commentary: paragraphs **142-3, 208.**

(*b*) "Commissioner" means a Commissioner for Workmen's Compensation appointed under section 20;

(*c*) "compensation" means compensation as provided for by this Act;

References in commentary: paragraphs **88,** 198.

(*d*) "dependant" means any of the following relatives of a deceased workman, namely —

(*i*) a wife, a minor legitimate son, an unmarried legitimate daughter, or a widowed mother; and

---

*The "references in commentary" inserted after sections or sub-sections are not part of the Act, but indicate the paragraphs in the preceding part of this book where reference is made to these sections or sub-sections, or to phrases in them. Paragraphs containing discussion are shown in heavier type; the other paragraphs contain less important references.

(*ii*) if wholly or in part dependant on the earnings of the workman at the time of his death, a husband, a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother, an unmarried or widowed sister, a widowed daughter-in-law, a minor child of a deceased son, or, where no parent of the workman is alive, a paternal grandparent;

References in commentary : paragraphs **275-7, 289, 316,** 10.

(*e*) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him;

References in commentary : paragraphs **60-63,** 57, 184.

(*f*) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;

References in commentary : paragraphs **62,** 185.

(*g*) "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified in Schedule I shall be deemed to result in permanent partial disablement;

References in commentary : paragraphs **151, 158,** 97.

(*h*) "prescribed" means prescribed by rules made under this Act;

(*i*) "qualified medical practitioner" means any person registered under the Medical Act, 1858, or any Act amending the same, or under any Act of any Legislature in British India providing for the maintenance of a register of medical practitioners, or, in any area when no such last-mentioned Act is in force, any person declared by the Local Government, by notification in the local official Gazette, to be a qualified medical practitioner for the purposes of this Act; 21 & 22 Vict. c. 90.

References in commentary: paragraphs **190,** 204.

(*k*) "seaman" means any person forming part of the crew of any ship, but does not include the master of the ship.

Reference in commentary: paragraph **35.**

(*l*) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement: provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I where the aggregate percentage of the loss of earning capacity, as specified in that Schedule against those injuries, amounts to one hundred per cent.;

References in commentary: paragraphs **147,** 97.

(*m*) "wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

References in commentary: paragraphs **164-8, 57,** 56.

(*n*) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is—

References in commentary :—

general ; paragraphs **10, 168.**
" casual nature " ; paragraphs **52-3, 55, 12.**
" employed otherwise than, " etc. ; paragraphs **54-5, 12.**

(*i*) a railway servant as defined in section 3 of the Indian Railways Act, 1890, not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

References in commentary : paragraphs **11-15.**

(*ii*) employed on monthly wages not exceeding three hundred rupees, in any such capacity as is specified in Schedule II,

References in commentary : paragraphs **56-7,** 10.

whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of His Majesty's naval, military or air forces or of the Royal Indian Marine Service; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

References in commentary:—

" contract of employment " ; paragraph **60.**
" member of His Majesty's....forces, " etc.: paragraphs 58, 15.
" any reference to a workman who has been injured." etc. ; paragraphs **145-6,** 85.

(*2*) The exercise and performance of the powers and duties of a local authority or of any department of the Government shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

Reference in commentary : paragraph **69.**

(*3*) The Governor General in Council, after giving, by notification in the *Gazette of India*, not less than three months' notice of his intention so to do, may, by a like notification, add to Schedule II any class of persons employed in any occupation

which he is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply to such classes of persons :

Provided that in making such addition the Governor General in Council may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.

References in commentary : paragraphs **50-51,** 10.

CHAPTER II

WORKMEN'S COMPENSATION

Employer's liability for compensation.

3. (*1*) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter :

References in commentary :—

" personal injury" ; paragraphs **95-8.**
" accident " ; paragraphs **99-104**
" arising out of .. employment " ; paragraphs **115-127, 105-6.**
" in the course of his employment " : paragraphs **107-114, 105-6.**
general ; paragraphs **60,** 143.

Provided that the employer shall not be so liable—

(*a*) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding seven days ;

References in commentary: paragraphs **159-160,** 96, 128.

(*b*) in respect of any injury, not resulting in death, caused by an accident which is directly attributable to—

(*i*) the workman having been at the time thereof under the influence of drink or drugs, or

(*ii*) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(*iii*) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen ;

References in commentary :—

proviso generally ; paragraphs **128-133, 290,** 140.
clause (*i*) ; paragraph **130.**
clause (*ii*) ; paragraphs **131-2, 127.**
clause (*iii*) ; paragraph **133.**

(*2*) If a workman employed in any employment involving the handling of wool, hair, bristles or animal carcasses or parts of such carcasses, or in the loading, unloading or transport of any merchandise, or in any work in connection with animals infected with anthrax contracts the disease of anthrax, or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

Explanation.—For the purposes of this sub-section a period of service shall be deemed to be continuous which has not included a period of service under any other employer.

References in commentary : paragraphs **134-6, 99,** 100, 181.

(*3*) The Governor General in Council, after giving, by notification in the *Gazette of India*, not less than three months' notice of his intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of the employment so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and the provisions of sub-section (*2*) shall thereupon apply as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

Reference in commentary : paragraph **134.**

(*4*) Save as provided by sub-sections (*2*) and (*3*), no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

References in commentary : paragraphs **137-140,** 134.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury—

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

References in commentary: paragraphs **84-8.**

Amount of compensation.

4. (*1*) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely :—

A. Where death results from the injury—

(*i*) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the second column thereof, and

(*ii*) in the case of a minor—two hundred rupees;

References in commentary: paragraphs **144, 96.**

B. Where permanent total disablement results from the injury—

(*i*) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the third column thereof, and

(*ii*) in the case of a minor—twelve hundred rupees;

References in commentary : paragraphs **147-9,** 96.

C. Where permanent partial disablement results from the injury—

(*i*) in the case of an injury specified in Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

(*ii*) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury.

Explanation.—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries;

References in commentary: paragraphs **151-7,** 96.

D. Where temporary disablement, whether total or partial, results from the injury, a half-monthly payment payable on the sixteenth day after the expiry of a waiting period of seven days from the date of the disablement, and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter—

(*i*) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—of the sum shown against such limits in the fourth column thereof, and

(*ii*) in the case of a minor—of one-half of his monthly wages, subject to a maximum of thirty rupees:

References in commentary : paragraphs **158-163,** 96.

Provided that—

(*a*) there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be: and

References in commentary : paragraphs **145-6, 150, 162, 228.** **82,** 281.

(*b*) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

Reference in commentary : paragraph **162.**

(2) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

Reference in commentary : paragraph **208.**

Method of calculating wages.

5. (1) For the purposes of this Act the monthly wages of a workman shall be calculated as follows, namely :—

(a) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period ;

(b) where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the workman shall be deemed to be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or, if there was no workman so employed, by a workman employed on similar work in the same locality ;

(c) in other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

References in commentary : paragraphs **169-178, 168,** 56.

Explanation.—A period of service shall, for the purposes of this sub-section be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

Reference in commentary : paragraph **135.**

Review.

6. (1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner, on

the application either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.

(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

References in commentary : paragraphs **267-272, 303,** 237.

7. Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either party to the Commissioner be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case may be.

References in commentary : paragraphs **210-5,** 319.

8. (1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation :

Provided that, in the case of a deceased workman, an employer may make to any dependant advances on account of compensation not exceeding an aggregate of one hundred rupees, and so much of such aggregate as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer ;

References in commentary : paragraphs **279-281, 208, 209, 150.**

(2) Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

References in commentary : paragraphs **207, 300.**

(*3*) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(*4*) On the deposit of any money under sub-section (*1*) as compensation in respect of a deceased workman the Commissioner shall deduct therefrom the actual cost of the workman's funeral expenses, to an amount not exceeding twenty-five rupees and pay the same to the person by whom such expenses were incurred, and shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

References in commentary : paragraphs **280-1, 293-4, 296,** 299.

(*5*) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (*4*), be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant.

References in commentary : paragraphs **298, 286.**

(*6*) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

Reference in commentary : paragraph 206.

(*7*) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct ; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependant of the workman or to any other

person whom the Commissioner thinks best fitted to provide for the welfare of the workman.

References in commentary: paragraphs **208, 299,** 209, 301.

(*8*) Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case:

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

References in commentary: paragraphs **300-1,** 302.

(*9*) Where the Commissioner varies any order under sub-section (*8*) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.

References in commentary: paragraphs **302,** 301.

Compensation not to be assigned, attached or charged.

9. Save as provided by this Act, no lump sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

Reference in commentary: paragraph **313.**

Notice and claim.

10. (*1*) No proceedings for the recovery of compensation shall be maintainable before a Commissioner unless notice of the accident has been given, in the manner hereinafter provided, as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been instituted within six months of the occurrence of the accident or, in case of death, within six months from the date of death:

References in commentary:—

provisions relating to notice ; paragraphs **174-5, 177, 179-180, 187,** 241.

provisions relating to institution of claim ; paragraphs **242-3, 272, 295,** 303, 241, 143.

Provided that, where the accident is the contracting of a disease in respect of which the provisions of sub-section (*2*) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease :

Reference in commentary : paragraph **191.**

Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the maintenance of proceedings—

(*a*) if the claim is made in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(*b*) if the employer had knowledge of the accident from any other source at or about the time when it occurred.

References in commentary : paragraphs **182-4, 185, 243.**

Provided, further, that the Commissioner may admit and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been instituted, in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or institute the claim, as the case may be, was due to sufficient cause.

References in commentary : paragraphs **243, 244-252.**

(*2*) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person directly responsible to the employer

for the management of any branch of the trade or business in which the injured workman was employed.

References in commentary : paragraphs **175-6, 72,** 184.

(*3*) The Local Government may require that any prescribed class of employers shall maintain at their premises at which workmen are employed a notice-book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting *bona fide* on his behalf.

References in commentary : paragraphs **179, 189.**

(*4*) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice-book is maintained, by entry in the notice-book.

References in commentary : paragraphs 175, 177.

Power to require from employers statements regarding fatal accidents.

10A. (*1*) Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(*2*) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(*3*) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(*4*) Where the employer has so disclaimed liability, the Commissioner, after such enquiry as he may think fit, may inform any of the dependants of the deceased workman that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

References in commentary : paragraphs **288-292.**

Reports of fatal accidents.

10B. (*1*) Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf

of an employer, of any accident occurring on his premises which results in death, the person required to give the notice shall, within seven days of the death, send a report to the Commissioner giving the circumstances attending the death :

Provided that where the Local Government has so prescribed the person required to give the notice may instead of sending such report to the Commissioner send it to the authority to whom he is required to give the notice.

(*2*) The Local Government may, by notification in the local official Gazette, extend the provisions of sub-section (*1*) to any class of premises other than those coming within the scope of that sub-section, and may, by such notification, specify the persons who shall send the report to the Commissioner.

References in commentary : paragraphs **283-7, 292, 94.**

Medical examination.

11. (*1*) Where a workman has given notice of an accident, he shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time :

Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed.

References in commentary: paragraphs **189-192, 199.**

(*2*) If a workman, on being required to do so by the employer under sub-section (*1*) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstruct the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

References in commentary: paragraphs **195-7, 200.**

(*3*) If a workman, before the expiry of the period within which he is liable under sub-section (*1*) to be required to submit himself for medical examination, voluntarily leaves without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

References in commentary: paragraphs **194, 196, 200.**

(*4*) Where a workman, whose right to compensation has been suspended under sub-section (*2*) or sub-section (*3*), dies without having submitted himself for medical examination as required by either of those sub-sections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependents of the deceased workman.

References in commentary: paragraphs **198,** 237.

(*5*) Where under sub-section (*2*) or sub-section (*3*) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause D of sub-section (*1*) of section 4, the waiting period shall be increased by the period during which the suspension continues.

References in commentary: paragraph **197.**

(*6*) Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is thereafter proved that the workman has not been regularly attended by a qualified medical practitioner and that such refusal, failure or disregard was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner, and compensation, if any, shall be payable accordingly.

References in commentary: paragraphs **201-4,** 140.

Contracting.

12. (*1*) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the

principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

References in commentary: paragraphs **64-9, 71, 72,** 184.

(*2*) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

References in commentary: paragraphs **73, 75-6, 259.**

(*3*) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

Reference in commentary : paragraph **71.**

(*4*) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

Reference in commentary : paragraph **70.**

Remedies of employer against stranger.

13. Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

References in commentary : paragraphs **77-9.**

Insolvency of employer.

14. (*1*) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his

creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(*2*) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.

(*3*) Where in any case such as is referred to in sub-section (*1*) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia), the provisions of that sub-section shall apply as if the contract were not void or voidable and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman :

Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

III of 1909. V of 1920. VII of 1913.

(*4*) There shall be deemed to be included among the debts which under section 49 of the Presidency-towns Insolvency Act, 1909, or under section 61 of the Provincial Insolvency Act, 1920, or under section 230 of the Indian Companies Act, 1913, are in the distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.

(*5*) Where the compensation is a half-monthly payment, the amount due in respect thereof shall for the purposes of this section be taken to be the amount of the lump sum for which the half-monthly payment could, if redeemable, be redeemed if application

were made for that purpose under section 7, and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.

(*6*) The provisions of sub-section (*4*) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (*3*), but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in sub-section (*1*).

(*7*) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

References in commentary : paragraphs **89-91.**

Special provisions relating to masters and seamen.

15. This Act shall apply in the case of workmen who are masters of ships or seamen subject to the following modifications, namely :—

(*1*) The notice of the accident and the claim for compensation may, except where the person injured is the master of the ship, be served on the master of the ship as if he were the employer, but where the accident happened and the disablement commenced on board the ship, it shall not be necessary for any seaman to give any notice of the accident.

References in commentary : paragraphs **185,** 176.

(*2*) In the case of the death of a master or seaman the claim for compensation shall be made within six months after the news of the death has been received by the claimant or, where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was, or is deemed to have been, so lost.

Reference in commentary : paragraph 295.

(*3*) Where an injured master or seaman is discharged or left behind in any part of His Majesty's dominions or in a foreign country, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Governor General in Council or any Local Government shall, in any proceedings for enforcing the claim, be admissible in evidence—

(*a*) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made ;

(*b*) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness; and

(*c*) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused;

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

References in commentary: paragraph **264.**

(*4*) In the case of the death of a master or seaman leaving no dependants, the Commissioner shall, if the owner of the ship is under any law in force for the time being in British India relating to merchant shipping liable to pay the expenses of burial of the master or seaman, return to the employer the full amount of the compensation deposited under sub-section (*1*) of section 8 without making the deduction referred to in sub-section (*4*) of that section.

(*5*) No half-monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being in British India relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

Reference in commentary: paragraph **163.**

Returns as to compensation.

16. The Governor General in Council may, by notification in the *Gazette of India*, direct that every person employing workmen, or that any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation, together with such other particulars as to the compensation as the Governor General in Council may direct.

References in commentary: paragraphs **92-3.**

Contracting out.

17. Any contract or agreement whether made before or after the commencement of this Act, whereby a workman

relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

References in commentary: paragraphs **80-2, 74, 206.**

Proof of age

18. Where any question arises as to the age of a person injured by accident arising out of and in the course of his employment in a factory, a certificate granted in respect of such person under section 7 or section 8 of the Indian Factories Act, 1911, before the occurrence of the injury shall be conclusive proof of the age of such person.

[1911.

References in commentary: paragraphs **142,** 264.

Penalties.

18A. (*1*) Whoever—

(*a*) fails to maintain a notice-book which he is required to maintain under sub-section (*3*) of section 10, or

(*b*) fails to send to the Commissioner a statement which he is required to send under sub-section (*1*) of section 10A, or

(*c*) fails to send a report which he is required to send under section 10B, or

(*d*) fails to make a return which he is required to make under section 16,

shall be punishable with fine which may extend to one hundred rupees.

(*2*) No prosecution under this section shall be instituted except by or with the previous sanction of a Commissioner, and no Court shall take cognizance of any offence under this section, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

References in commentary: paragraphs 4, 94, 178, 286, 292.

CHAPTER III.

COMMISSIONERS.

Reference to Commissioners.

19. (*1*) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner.

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

References in commentary: paragraphs **83, 88, 311,** 4.

Appointment of Commissioners.

20. (1) The Local Government may, by notification in the local official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such local area as may be specified in the notification.

Reference in commentary: paragraph 83.

(2) Where more than one Commissioner has been appointed for any local area, the Local Government may, by general or special order, regulate the distribution of business between them.

Reference in commentary: paragraph 305.

(3) Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

Reference in commentary: paragraph **263.**

(4) Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code. XLV

Venue of proceedings and transfer.

21. (1) Where any matter is under this Act to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before a Commissioner for the local area in which the accident took place which resulted in the injury:

Provided that, where the workman is the master of a ship or a seaman, any such matter may be done by or before a Commissioner for the local area in which the owner or agent of the ship resides or carries on business.

Reference in commentary: paragraph 305.

(2) If a Commissioner is satisfied by any party to any proceedings under this Act pending before him that such matter can be more conveniently dealt with by any other Commissioner, whether in the same province or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the

matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

Provided that no matter other than a matter relating to the actual payment to a workman or the distribution among dependants of a lump sum shall be transferred for disposal under this sub-section to a Commissioner in the same province save with the previous sanction of the Local Government or to a Commissioner in another province save with the previous sanction of the Governor General in Council, unless all the parties to the proceedings agree to the transfer.

References in commentary: paragraphs **306-8,** 305.

(*3*) The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire thereinto and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.

Reference in commentary: paragraph 306.

(*4*) On receipt of a report from a Commissioner to whom any matter has been transferred for report under sub-section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.

Reference in commentary : paragraph 306.

(*5*) The Local Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.

References in commentary: paragraphs **309,** 291.

Form of application

22. (*1*) No application for the settlement of any matter by a Commissioner, other than an application by a dependant or dependants for compensation shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

References in commentary: paragraphs **238-9, 243, 272, 236,** 231, 244, 293.

(*2*) An application to a Commissioner may be made in such form and shall be accompanied by such fee, if any, as may be

prescribed, and shall contain, in addition to any particulars which may be prescribed, the following particulars, namely :—

(*a*) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims ;

(*b*) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in due time, the reason for such omission ;

(*c*) the names and addresses of the parties ; and

(*d*) except in the case of an application by dependants for compensation a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

References in commentary : paragraphs **238,** 303.

(*3*) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner.

Reference in commentary : paragraph 238.

Power of Commissioner to require further deposit in cases of fatal accident.

22A. (*1*) Where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death, and in the opinion of the Commissioner such sum is insufficient, the Commissioner may by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

(*2*) If the employer fails to show cause to the satisfaction of the Commissioner, the Commissioner may make an award, determining the total amount payable, and requiring the employer to deposit the deficiency.

Reference in commentary : paragraph **282.**

Powers and procedure of Commissioners.

23. The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, and the Commissioner shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898. V of 1908. V of 1898.

References in commentary : paragraphs **264, 258,** 4, 236.

24. Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or other person authorised in writing by such person. Appearance of parties.

Reference in commentary : paragraph **261.**

25. The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the record : Method of recording evidence.

Provided that if the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation, and shall sign the same, and such memorandum shall form part of the record :

Provided, further that the evidence of any medical witness shall be taken down as nearly as may be word for word.

Reference in commentary : paragraph **264.**

26. All costs incidental to any proceedings before a Commissioner shall, subject to rules made under this Act, be in the discretion of the Commissioner. Costs.

Reference in commentary : paragraph **266.**

27. A Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision. Power to submit cases.

References in commentary : paragraphs **314-6.**

28. (*1*) Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman or a person under a legal disability a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner : Registration of agreements.

Provided that—

(*a*) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned;

(*c*) the Commissioner may at any time rectify the register;

(*d*) where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable to a woman or a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement and may make such order including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

References in commentary: paragraphs **216-227, 233, 270,** 208, 209.

(*1*) An agreement for the payment of compensation which has been registered under sub-section (*1*) shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872, or in any other law for the time being in force. IX of 1872.

Reference in commentary: paragraph **234.**

Effect of failure to register agreement.

29. Where a memorandum of any agreement the registration of which is required by section 28, is not sent to the Commissioner as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-section (*1*) of section 4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

References in commentary : paragraphs **228-232,** 217.

Appeals.

30. (*1*) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:—

(*a*) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(*b*) an order refusing to allow redemption of a half-monthly payment;

(*c*) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;

(*d*) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (*1*) of section 12; or

(*e*) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (*b*), unless the amount in dispute in the appeal is not less than three hundred rupees:

Provided, further, that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

Provided further that no appeal by an employer under clause (*a*) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(*2*) The period of limitation for an appeal under this section shall be sixty days.

(*3*) The provisions of section 5 of the Indian Limitation Act 1908, shall be applicable to appeals under this section.

IX of 1908.

References in commentary: paragraphs **317-325, 214, 315,** 243, 262.

Withholding of certain payments pending decision of appeals.

30-A. Where an employer makes an appeal under clause (*a*) of sub-section (*1*) of section 30, the Commissioner may, and if so directed by the High Court shall, pending the decision of the appeal, withhold payment of any sum in deposit with him.

Reference in commentary : paragraph **324.**

Recovery.

31. The Commissioner may recover as an arrear of land revenue any amount payable by any person under this Act, whether under an agreement for the payment of compensation

or otherwise, and the Commissioner shall be deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act, 1890. I of 1890.

References in commentary: paragraphs **311-2, 217, 233, 88.**

CHAPTER IV.

RULES.

Power of the Governor General in Council to make rules.

32. (*1*) The Governor General in Council may make rules to carry out the purposes of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 6 when not accompanied by a medical certificate ;

(*b*) for prescribing the intervals at which and the conditions subject to which a workman may be required to submit himself for medical examination under sub-section (*1*) of section 11 ;

(*c*) for prescribing the procedure to be followed by Commissioners in the disposal of cases under this Act and by the parties in such cases ;

(*d*) for regulating the transfer of matters and cases from one Commissioner to another and the transfer of money in such cases ;

(*e*) for prescribing the manner in which money in the hands of a Commissioner may be invested for the benefit of dependants of a deceased workman and for the transfer of money so invested from one Commissioner to another ;

(*f*) for the representation in proceedings before Commissioners of parties who are minors or are unable to make an appearance ;

(*g*) for prescribing the form and manner in which memoranda of agreements shall be presented and registered ;

(*h*) for the withholding by Commissioners, whether in whole or in part of half-monthly payments pending decision on applications for review of the same ; and

(*i*) for any other matter which is not, in the opinion of the Governor-General in Council, a matter of merely local or provincial importance.

References in commentary: paragraphs **261,** 208, 234.

Power of Local Government to make rules.

33. The Local Government may, subject to the control of the Governor-General in Council, make rules to provide for all or any of the following matters, namely :—

(*a*) for regulating the scales of costs which may be allowed in proceedings under this Act ;

(*b*) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under this Act ;

(*c*) for the maintenance by Commissioners of registers and records of proceedings before them ;

(*d*) for prescribing the classes of employers who shall maintain notice-books under sub-section (*3*) of section 10, and the form of such notice-books ;

(*e*) for prescribing the form of statement to be submitted by employers under section 10A ;

(*f*) for prescribing the cases in which the report referred to in section 10B may be sent to an authority other than the Commissioner ; and

(*g*) generally for carrying out the provisions of this Act in respect of any matter which is in the opinion of the Local Government, a matter of merely local importance in the province.

Publication of rules.

34. (*1*) The power to make rules conferred by sections 32 and 33 shall be subject to the condition of the rules being made after previous publication.

X of 1897.

(*2*) The date to be specified in accordance with clause (*3*) of section 23 of the General Clauses Act, 1897, as that after which a draft of rules proposed to be made under section 32 or section 33 will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(*3*) Rules so made shall be published in the Gazette of India or the local official Gazette, as the case may be, and on such publication, shall have effect as if enacted in this Act.

Rules to give effect to arrangements with other countries for the transfer of money paid as compensation.

35. The Governor General in Council may, by notification in the Gazette of India, make rules for the transfer to any part of His Majesty's Dominions or to any other country of money paid to a Commissioner under this Act for the benefit of any person residing or about to reside in such part or country and for the receipt and administration in British India of any money awarded under the law relating to workmen's compensation in

any part of His Majesty's Dominions or in any other country, and applicable for the benefit of any person residing or about to reside in British India.

Reference in commentary : paragraph **310.**

SCHEDULE I.

[*See sections* 2 (1) *and* 4.]

List of Injuries deemed to result in permanent partial disablement.

Injury.	Percentage of loss of earning capacity.
Loss of right arm above or at the elbow	70
Loss of left arm above or at the elbow	60
Loss of right arm below the elbow	60
Loss of leg at or above the knee	60
Loss of left arm below the elbow	50
Loss of leg below the knee	50
Permanent total loss of hearing	50
Loss of one eye	30
Loss of thumb	25
Loss of all toes of one foot	20
Loss of one phalanx of thumb	10
Loss of index finger	10
Loss of great toe	10
Loss of any finger other than index finger	5

NOTE.—Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be equivalent of the loss of that limb or member.

References in commentary : paragraphs **153-4,** 142, 151, 156, 157.

SCHEDULE II.

[*See section* 2 (1) (*n*).]

List of persons who, subject to the provisions of section 2 (1) (*n*), *are included in the definition of workmen.*

The following persons are workmen within the meaning of section 2 (1) (*n*) and subject to the provisions of that section, that is to say, any person who is—

References in commentary to Schedule generally, paragraphs **16-19,** 10.

(*i*) employed, otherwise than in a clerical capacity or on a railway, in connection with the operation or maintenance of mechanically propelled vehicles; or

References in commentary: paragraphs **20-22,** 19, 43.

(*ii*) employed otherwise than in a clerical capacity in any premises wherein, or within the precincts whereof, on any one day of the preceding twelve months, ten or more persons have been employed in any manufacturing process, as defined in clause (4) of section 2 of the Indian Factories Act, 1911, or in any kind of work whatsoever incidental to, or connected with any such manufacturing process or with the article made, and steam, water or other mechanical power or electrical power is used; or XII of 1911.

References in commentary: paragraphs **23-28, 14, 18, 19, 34,** 20, 47.

(*iii*) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises wherein or within the precincts whereof on any one day of the preceding twelve months, fifty or more persons have been so employed; or

References in commentary: paragraphs **29, 18,** 23, 45.

(*iv*) employed in the manufacture or handling of explosives in any premises wherein, or within the precincts whereof, on any one day of the preceding twelve months, ten or more persons have been so employed; or

References in commentary: paragraphs **30, 18,** 23.

(*v*) employed, in any mine as defined in clause (*f*) of section 3 of the Indian Mines Act, 1923, in any mining operation, or in any kind of work, other than clerical work, incidental to or connected with any mining operation or with the mineral obtained, or in any kind of work whatsoever below ground: IV of 1923.

Provided that any excavation in which on no day of the preceding twelve months more than fifty persons have been employed or explosives have been used and whose depth from its highest to its lowest point does not exceed twenty feet shall be deemed not to be a mine for the purpose of this clause; or

References in commentary: paragraphs **31-2, 33, 34, 14,** 47.

(*vi*) employed as the master or as a seaman of—

(*a*) any ship which is propelled wholly or in part by steam or other mechanical power or by electricity or which is towed or intended to be towed by a ship so propelled, or

(*b*) any ship not included in sub-clause (*a*) of fifty tons net tonnage or over; or

References in commentary: paragraphs **35,** 20, 325.

(*vii*) employed for the purpose of loading, unloading, fuelling, constructing, repairing, demolishing, cleaning or painting any ship of which he is not the master or a member of the crew, or in the handling or transport within the limits of any port subject to the Indian Ports Act, 1908, of goods which have been discharged from or are to be loaded into any vessel; or

References in commentary: paragraphs **38-9,** 45.

(*viii*) employed in the construction, repair or demolition of—

(*a*) any building which is designed to be or is or has been more than one storey in height above the ground or twenty feet or more from the ground level to the apex of the roof, or

(*b*) any dam or embankment which is twenty feet or more in height from its lowest to its highest point; or

(*c*) any road, bridge, or tunnel; or

(*d*) any wharf, quay, sea wall or other marine work including any moorings of ships; or

References in commentary: paragraphs **40-41,** 47.

(*ix*) employed in setting up, repairing, maintaining, or taking down any telegraph or telephone line or post or any overhead electric line or cable or post or standard for the same; or

References in commentary: paragraphs **40-41, 43.**

(*x*) employed, otherwise than in a clerical capacity, in the construction working, repair or demolition of any aerial ropeway, canal, pipe-line, or sewer; or

References in commentary: paragraphs **40-41, 19, 34.**

(*xi*) employed in the service of any fire brigade; or

Reference in commentary: paragraph 47.

(*xii*) employed upon a railway as defined in clause (4) of section 3, and sub-section (1) of section 148 of the Indian Railways Act, 1890, either directly or through a sub-contractor, by a person fulfilling a contract with the railway administration, or

IX of 1890.

References in commentary: paragraphs **17,** 11, 22.

(*xiii*) employed as an inspector, mail guard, sorter or van peon in the Railway Mail Service, or employed in any occupation ordinarily involving outdoor work in the Indian Posts and Telegraphs Department; or

References in commentary: paragraphs **42-3, 17,** 33.

(*xiv*) employed, otherwise than in a clerical capacity, in connection with operations for winning natural petroleum or natural gas; or

References in commentary: paragraphs **34, 19.**

(*xv*) employed in any occupation involving blasting operations; or

References in commentary: paragraph **47.**

(*xvi*) employed in the making of any excavation in which on any one day of the preceding twelve months more than fifty persons have been employed or explosives have been used, or whose depth from its highest to its lowest point exceeds twenty feet; or

References in commentary: paragraphs **33, 18,** 47.

(*xvii*) employed in the operation of any ferry boat capble of carrying more than ten persons; or

References in commentary: paragraph **37.**

(*xviii*) employed, otherwise than in a clerical capacity, on any estate which is maintained for the purpose of growing cinchona, coffee rubber or tea, and on which on any one day in the preceding twelve months twentyfive or more persons have been so employed ; or

References in commentary: paragraphs **44-6,** 18, 19.

(*xix*) employed, otherwise than in a clerical capacity, in the generating transforming or supplying of electrical energy or in the generating or supplying of gas ; or

References in commentary: paragraphs **47, 19.**

(*xx*) employed in a lighthouse as defined in clause (*d*) of section 2 of the Indian Lighthouse Act, 1927 ; or

References in commentary: paragraphs **48, 37.**

(*xxi*) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures ; or

(*xxii*) employed in the training, keeping or working of elephants or wild animals ; or

(*xxiii*) employed as a diver

References in commentary: paragraph **49.**

Explanation.—In this Schedule, 'the preceding twelve months' relates in any particular case to the twelve months ending with the day on which the accident in such case occurred.

Reference in commentary: paragraph 18.

SCHEDULE III.

(*See section* 3.)

List of occupational diseases.

Occupational disease.	Employment.
Lead poisoning or its sequelæ ..	Any process involving the use of lead or its preparations or compounds.
Phosphorus poisoning or its sequelæ ..	Any process involving the use of phosphorus or its preparations or compounds.
Mercury poisoning or its sequelæ	Any process involving the use of mercury or its preparations or compounds.
Poisoning by benzene and its homologues, or the sequelæ of such poisoning.	Handling benzene or any of its homologues—and any process in the manufacture or involving the use of benzene or any of its homologues.
Chrome ulceration or its sequelæ ..	Any process involving the use of chromic acid or bichromate of ammonium, potassium or sodium, or their preparations.
Compressed air illness or its sequelæ ..	Any process carried on in compressed air.

References in commentary: paragraphs **134-6,**

SCHEDULE IV.

(*See section* 4.)

Compensation payable in certain cases.

Monthly wages of the workman injured.		Amount of compensation for—		Half monthly payment as compensation for Temporary Disablement of Adult.
		Death of Adult.	Permanent total Disablement of Adult.	
1		2	3	4
More than	But not more than			
Rs.	Rs.	Rs.	Rs.	Rs. As.
0	10	500	700	Half his monthly wages.
10	15	550	770	5 0
15	18	600	840	6 0
18	21	630	882	7 0
21	24	720	1,008	8 0
24	27	810	1,134	8 8
27	30	900	1,260	9 0
30	35	1,050	1,470	9 8
35	40	1,200	1,680	10 0
40	45	1,350	1,890	11 4
45	50	1,500	2,100	12 8
50	60	1,800	2,520	15 0
60	70	2,100	2,940	17 8
70	80	2,400	3,360	20 0
80	100	3,000	4,200	25 0
100	200	3,500	4,900	30 0
200	..	4,000	5,600	30 0

References in commentary : paragraphs **144, 148, 161,** 142,

ADDITIONS TO SCHEDULE II

NOTIFICATION.*

In exercise of the powers conferred by sub-section (*3*) of section 2 of the Workmen's Compensation Act, 1923 (VIII of 1923), and in supersession of the notification of the Government of India in the Department of Industries and Labour No. L.-3002, dated the 2nd July 1934, the Governor General in Council, having given previous notice of his intention so to do, is pleased to add to Schedule II to the said Act persons employed otherwise than in a clerical capacity in the following occupations.

Occupations.

(*a*) The felling or logging of trees;

(*b*) the transport of timber by inland waters;

(*c*) the control or extinguishing of forest fires; and

(*d*) elephant-catching operations.

*Government of India, Department of Industries and Labour, No. L300 dated the 6th June 1935.

WORKMEN'S COMPENSATION RULES, 1924

(*As amended up to the* 1*st March* 1936).

PRELIMINARY.

Short title.

1. These rules may be called the Workmen's Compensation Rules, 1924.

Definition.

2. In these rules, unless there is anything repugnant in the subject or context,—

(*a*) "the Act" means the Workmen's Compensation Act, 1923;

(*b*) "Form" means a form appended to these rules;

(*c*) "section" means a section of the Act.

PART I.

REVIEW OF HALF-MONTHLY PAYMENTS AND COMMUTATION THEREOF.

When application may be made without medical certificate.

3. Application for review of a half-monthly payment under section 6 may be made without being accompanied by a medical certificate—

(*a*) by the employer, on the ground that since the right to compensation was determined the workman's wages have increased;

(*b*) by the workman, on the ground that since the right to compensation was determined his wages have diminished;

(*c*) by the workman, on the ground that the employer, having commenced to pay compensation, has ceased to pay the same, notwithstanding the fact that there has been no change in the workman's condition such as to warrant such cessation;

(*d*) either by the employer or by the workman, on the ground that the determination of the rate of compensation for the time being in force was obtained by fraud or undue influence or other improper means;

(*e*) either by the employer or by the workman on the ground that in the determination of compensation there is a mistake or error apparent on the face of the record.

References in commentary : paragraphs **267-271, 302.**

4. If, on examining an application for review by an employer in which the reduction or discontinuance of half-monthly payments is sought, it appears to the Commissioner that there is reasonable ground for believing that the employer has a right to such reduction or discontinuance, he may at any time issue an order withholding the half-monthly payments in whole or in part pending his decision on the application.

Procedure on application for review.

Reference in commentary : paragraph 272.

5. (*1*) Where application is made to the Commissioner under section 7 for the redemption of a right to receive half-monthly payments by the payment of a lump sum, the Commissioner shall form an estimate of the probable duration of the disablement, and shall award a sum equivalent to the total of the half-monthly payments which would be payable for the period during which he estimates that the disablement will continue, less one-half per cent. of that total for each month comprised in that period :

Procedure on application for commutation.

Provided that fractions of a rupee included in the sum so computed shall be disregarded.

(*2*) When, in any case to which sub-rule (*1*) applies, the Commissioner is unable to form an approximate estimate of the probable duration of the disablement, he may from time to time postpone a decision on the application for a period not exceeding two months at any one time.

References in commentary : paragraphs **212-3, 225,** 318.

PART II.

DEPOSIT OF COMPENSATION.

6. (*1*) An employer depositing compensation with the Commissioner under sub-section (*1*) of section 8 in respect of a workman whose injury has resulted in death shall furnish therewith a statement in Form A, and shall be given a receipt in Form B. In other cases of deposits with the Commissioner under sub-section (*1*) of section 8, the employer shall furnish a statement in Form AA, and shall be given a receipt in Form B.

Deposit under section 8 (1)

(*2*) If, when depositing compensation in respect of fatal accidents, the employer indicates in the statement referred to in sub-rule (*1*) that he desires to be made a party to the distribution

proceedings, the Commissioner shall, before allotting the sum deposited as compensation, afford to the employer an opportunity of establishing that the person to whom he proposes to allot such sum is not a dependant of the deceased workman, or, as the case may be, that no one of such persons is a dependant.

(*3*) The statement of disbursements to be furnished on application by the employer under sub-section (*4*) of section 8 shall be in Form C.

Reference in commentary : paragraph 281.

Publication of lists of deposits.

7. The Commissioner shall cause to be displayed in a prominent position outside his office an accurate list of the deposits received by him under sub-section (*1*) of section 8, together with the names and addresses of the depositors and of the workmen in respect of whose death or injury the deposits have been made.

Application by dependants for deposit of compensation.

8. (*1*) A dependant of a deceased workman may apply to the Commissioner for the issue of an order to deposit compensation in respect of the death of the workman. Such application shall be made in Form G.

(*2*) If compensation has not been deposited, the Commissioner shall dispose of such application in accordance with the provisions of Part V of these rules .

Provided that—

(*a*) the Commissioner may, at any time before issues are framed, cause notice to be given in such manner as he thinks fit to all or any of the dependants of the deceased workman who have not joined in the application, requiring them, if they desire to join therein, to appear before him on a date specified in this behalf ;

(*b*) any dependant to whom such notice has been given and who fails to appear and to join in the application on the date specified in the notice shall not be permitted thereafter to claim that the employer is liable to deposit compensation, unless he satisfies the Commissioner that he was prevented by any sufficient cause from appearing when the case was called on for hearing.

(*3*) If, after completing the inquiry into the application, the Commissioner issues an order requiring the employer to deposit compensation in accordance with sub-section (*1*) of section 8, nothing in sub-rule (*2*) shall be deemed to prohibit the allotment of any part of the sum deposited as compensation to a dependant of the deceased workman who failed to join in the application.

References in commentary : paragraphs **293-4,** 298.

Deposit under section 8 (2).

9. An employer depositing compensation in accordance with sub-section (*2*) of section 8 shall furnish therewith a statement in Form D, and shall be given a receipt in Form E.

Investment of money.

10. Money in the hands of a Commissioner may be invested for the benefit of the dependants of a deceased workman in Government securities or Post Office Cash Certificates, or may be deposited in a Post Office Savings Bank.

References in commentary : paragraphs **208,** 299.

PART III.

Reports of Accidents.

Report of fatal accidents.

11. The report required by section 10B shall, subject to such rules, if any, as may be made by the Local Government, be in Form EE.

Right of employer to present memorandum when information received.

11-A. (*1*) Any employer who has received information of an accident may at any time, notwithstanding the fact that no claim for compensation has been instituted in respect of such accident, present to the Commissioner a memorandum, supported by an affidavit made by himself or by any person subordinate to him having knowledge of the facts stated in the memorandum, embodying the results of any investigation or inquiry which has been made into the circumstances or cause of the accident.

(*2*) A memorandum presented under sub-rule (*1*) shall, subject to the payment of such fee as may be prescribed, be recorded by the Commissioner.

References in commentary : paragraphs **188,** 190.

PART IV.

MEDICAL EXAMINATION.

Workman not to be required to submit to medical examination save in accordance with rules.

12. A workman who is required by sub-section (*1*) of section 11 to submit himself for medical examination shall be bound to do so in accordance with the rules contained in this Part and not otherwise.

Reference in commentary : paragraph 189.

Examination when workman and medical practitioner both on premises.

13. When such workman is present on the employer's premises, and the employer offers to have him examined free of charge by a qualified medical practitioner who is so present, the workman shall submit himself for examination forthwith.

Reference in commentary : paragraph **191.**

Examination in other cases.

14. In cases to which rule 13 does not apply the employer may—

(*a*) send the medical practitioner to the place where the workman is residing for the time being in which case the workman shall submit himself for medical examination on being requested to do so by the medical practitioner, or

(*b*) send to the workman an offer in writing to have him examined free of charge by a qualified medical practitioner, in which case the workman shall submit himself for medical examination at the employer's premises or at such other place in the vicinity as is specified in such offer and at such time as is so specified.

Provided that—

(*i*) the time so specified shall not, save with the express consent of the workman, be between the hours of 7 P.M. and 6 A.M., and

(*ii*) in cases where the workman's condition renders it impossible or inadvisable that he should leave the place where he is residing for the time being he shall not be required to submit himself for medical examination save at such place.

Reference in commentary : paragraph **194.**

15. A workman who is in receipt of a half-monthly payment shall not be required to submit himself for medical examination elsewhere than at the place where he is residing for the time being more than twice in the first month following the accident, or more than once in any subsequent month.

Restriction on number of examinations.

References in commentary: paragraphs **199-200.**

16. If a workman whose right to compensation has been suspended under sub-section (*2*) or sub-section (*3*) of section 11 subsequently offers himself for medical examination, his examination shall take place on the employer's premises or at such other place in the vicinity as may be fixed by the employer, and at a time to be fixed by the employer not being, save with the express consent of the workman, more than 72 hours after the workman has so offered himself.

Examination after suspension of right to compensation.

Reference in commentary: paragraph **196.**

17. (*1*) No woman shall without her consent be medically examined by a male practitioner, save in the presence of another woman.

Examination of women.

(*2*) No woman shall be required to be medically examined by a male practitioner if she deposits a sum sufficient to cover the expenses of examination by a female practitioner.

Reference in commentary: paragraph **190.**

PART V.

PROCEDURE.

18. Save as otherwise provided in these rules, the procedure to be followed by Commissioners in the disposal of cases under the Act or these rules and by the parties in such cases shall be regulated in accordance with the rules contained in this Part.

Introductory.

19. (*1*) Any application of the nature referred to in section 22 may be sent to the Commissioner by registered post or may be presented to him or to any of his subordinates authorised by him in this behalf and, if so sent or presented, shall, unless the Commissioner otherwise directs, be made in duplicate in the appropriate Form, if any, and shall be signed by the applicant.

Applications.

(*2*) There shall be appended to every such application a certificate, which shall be signed by the applicant, to the effect that the statement of facts contained in the application is to the best of his knowledge and belief accurate.

Reference in commentary : paragraph 238.

Examination of applicant.

20. (*1*) On receiving such application, the Commissioner may examine the applicant on oath, or may send the application to any officer authorised by the local Government in this behalf and direct such officer to examine the applicant and his witnesses and forward the record thereof to the Commissioner.

(*2*) The substance of any examination made under sub-rule (*1*) shall be recorded in the manner provided for the recording of evidence in section 25.

References in commentary : paragraphs **253,** 258.

Summary dismissal of application.

21. The Commissioner may, after considering the application and the result of any examination of the applicant under rule 20, summarily dismiss the application, if, for reasons to be recorded, he is of opinion that there are no sufficient grounds for proceeding thereon.

References in commentary : paragraphs **253,** 258.

Preliminary inquiry into application.

22. If the application is not dismissed under rule 21, the Commissioner may, for reasons to be recorded, call upon the applicant to produce evidence in support of the application before calling upon any other party, and if upon considering such evidence the Commissioner is of opinion that there is no case for the relief claimed, he may dismiss the application with a brief statement of his reasons for so doing.

Reference in commentary : paragraph **254.**

Notice to opposite party.

23. If the Commissioner does not dismiss the application under rule 21 or rule 22, he shall send to the party from whom the applicant claims relief (hereinafter referred to as the opposite party) a copy of the application, together with a notice of the date on which he will dispose of the application and may call upon the parties to produce upon that date any evidence which they may to wish to tender.

References in commentary : paragraphs 218, 259, 297.

Appearance and examination of opposite party.

24. (*1*) The opposite party may, and if so required by the Commissioner, shall, at or before the first hearing or within such time as the Commissioner may permit, file a written statement dealing with the claim raised in the application, and any such written statement shall form part of the record.

(*2*) If the opposite party contests the claim, the Commissioner may, and, if no written statement has been filed, shall proceed to examine him upon the claim, and shall reduce the result of the examination to writing.

References in commentary: paragraphs 259, 297.

Framing of issues

25. (*1*) After considering any written statement and the result of any examination of the parties, the Commissioner shall ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues upon which the right decision of the case appears to him to depend.

(*2*) In recording the issues, the Commissioner shall distinguish between those issues which in his opinion concern points of fact and those which concern points of law

References in commentary: paragraphs **262, 315.**

Power to postpone trial of issues of fact where issues of law arise.

26. When issues both of law and of fact arise in the same case, and the Commissioner is of opinion that the case may be disposed of on the issues of law only, he may try those issues first, and for that purpose may, if he thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

References in commentary: paragraphs **262,** 315.

Diary.

27. The Commissioner shall maintain under his hand a brief diary of the proceedings on an application.

Reasons for postponement to be recorded.

28. If the Commissioner finds it impossible to dispose of an application at one hearing he shall record the reasons which necessitate a postponement.

Judgment.

29. (*1*) The Commissioner, in passing orders, shall record concisely in a judgment his finding on each of the issues framed and his reasons for such finding.

(2) The Commissioner, at the time of signing and dating his judgment, shall pronounce his decision, and thereafter no addition or alteration shall be made to the judgment other than the correction of a clerical or arithmetical mistake arising from any accidental slip or omission.

Reference in commentary : paragraph 266.

Summoning of witnesses.

30. If an application is presented by any party to the proceedings for the citation of witnesses, the Commissioner shall, on payment of the prescribed expenses and fees, issue summonses for the appearance of such witnesses, unless he considers that their appearance is not necessary for the just decision of the case.

Exemption from payment of costs.

31. If the Commissioner is satisfied that the applicant is unable, by reason of poverty, to pay the prescribed fees, he may remit any or all of such fees. If the case is decided in favour of the applicant, the prescribed fees which, had they not been remitted, would have been due to be paid, may be added to the costs of the case and recovered in such manner as the Commissioner in his order regarding costs may direct.

Reference in commentary : paragraph 264.

Right of entry for local inspection.

32. A Commissioner before whom any proceeding relating to an injury by accident is pending may at any time enter the place where the workman was injured, or where the workman ordinarily performed his work, for the purpose of making a local inspection or of examining any persons likely to be able to give information relevant to the proceedings:

Provided that the Commissioner shall not enter any premises of any industrial establishment except during the ordinary working hours of that establishment, save with the permission of the employer or of some person directly responsible to him for the management of the establishment.

Reference in commentary : paragraph 257.

Procedure in connection with local inspection.

33. (1) If the Commissioner proposes to conduct a local inspection with a view to examining on the spot the circumstances in which an accident took place, he shall give the parties or their representatives notices of his intention to conduct such inspection, unless in his opinion the urgency of the case renders the giving of such notice impracticable.

(2) Such notice may be given orally or in writing, and, in the case of an employer, may be given to any person upon whom notice of a claim can be served under sub-section (2) of section 10, or to the representative of any such person.

(3) Any party, or the representative of any party, may accompany the Commissioner at a local inspection.

(4) The Commissioner, after making a local inspection, shall note briefly in a memorandum any facts observed, and shall show the memorandum to any party who desires to see the same, and, on payment of the prescribed fee, shall supply any party with a copy thereof.

(5) The memorandum shall form part of the record.

Reference in commentary : paragraph **257.**

34. (1) The Commissioner during a local inspection or at any other time, save at a formal hearing of a case pending before him, may examine summarily any person likely to be able to give information relative to such case, whether such person has been or is to be called as a witness in the case or not, and whether any or all of the parties are present or not.

Power of summary examination.

(2) No oath shall be administered to a person examined under sub-rule (1).

(3) Statements made by persons examined under sub-rule (1), if reduced to writing, shall not be signed by the person making the statement, nor shall they, except as hereinafter provided, be incorporated in the record or utilised by the Commissioner for the purpose of arriving at a decision in the case.

(4) If a witness who has been examined under sub-rule (1) makes in evidence any material statement contradicting any statement made by him in such examination and reduced to writing, the Commissioner may call his attention to such statement, and shall in that case direct that the parties be furnished with the relevant part of such statement for the purpose of examining or cross-examining the witness.

(5) Any statement or part of a statement which is furnished to the parties under sub-rule (4) shall be incorporated in the record.

(6) Where a case is settled by agreement between the parties, the Commissioner may incorporate in the record any statement made under sub-rule (1), and may utilise such statement for the

purpose of justifying his acceptance of, or refusal to accept, the agreement reached.

References in commentary : paragraphs **255-7.**

Agreement to abide by Commissioner's decision.

35. (*1*) If a party states in writing his willingness to abide by the decision of the Commissioner, the Commissioner shall inquire whether the other party is willing to abide by his decision.

(*2*) If the other party agrees to abide by the Commissioner's decision, the fact of his agreement shall be recorded in writing and signed by him.

(*3*) If the other party does not agree to abide by the Commissioner's decision, the first party shall not remain under an obligation so to abide.

Reference in commentary : paragraph 323.

Procedure where indemnity claimed under section 12(2).

36. (*1*) Where the opposite party claims that if compensation is recovered against him he will be entitled under sub-section (2) of section 12 to be indemnified by a person not being a party to the case, he shall, when first called upon to answer the application present a notice of such claim to the Commissioner accompanied by the prescribed fee, and the Commissioner shall thereupon issue notice to such person in Form J.

(*2*) If any person served with a notice under sub-rule (*1*) desires to contest the applicant's claim for compensation or the opposite party's claim to be indemnified, he shall appear before the Commissioner on the date fixed for the hearing of the case or on any date to which the case may be adjourned and, if he so appears, shall have all the rights of a party to the proceedings ; in default of so appearing, he shall be deemed to admit the validity of any award made against the opposite party and to admit his own liability to indemnify the opposite party for any compensation recovered from him :

Provided that, if any person so served appears subsequently and satisfies the Commissioner that he was prevented by any sufficient cause from appearing the Commissioner shall, after giving notice to the aforesaid opposite party, hear such person, and may set aside or vary any award made against such person under this rule upon such terms as may be just.

(*3*) If any person served with a notice under sub-rule (*1*), whether or not he desires to contest the applicant's claim for compensation or the opposite party's claim to be indemnified, claims that being a contractor he is himself a principal and is entitled to be indemnified by a person standing to him in the relation of a contractor from whom the workman could have recovered compensation he shall on or before the date fixed in the notice under sub-rule (*1*) present a notice of such claim to the Commissioner accompanied by the prescribed fee and the Commissioner shall thereupon issue notice to such person in Form JJ.

(*4*) If any person served with a notice under sub-rule (*3*) desires to contest the applicant's claim for compensation, or the claim under sub-rule (*3*) to be indemnified he shall appear before the Commissioner on the date fixed in the notice in Form JJ or on any date to which the case may be adjourned and, if he so appears, shall have all the rights of a party to the proceedings; in default of so appearing he shall be deemed to admit the validity of any award made against the original opposite party or the person served with a notice under sub-rule (*1*) and to admit his own liability to indemnify the party against whom such award is made for any compensation recovered from him: Provided that, if any person so served appears subsequently and satisfies the Commissioner that he was prevented by any sufficient cause from appearing, the Commissioner shall, after giving notice to all parties on the record, hear such person, and may set aside or vary any award made against such person under this rule upon such terms as may be just.

(*5*) In any proceeding in which a notice has been served on any person under sub-rule (*1*) or sub-rule (*3*) the Commissioner shall, if he awards compensation, record in his judgment a finding in respect of each of such persons whether he is or is not liable to indemnify any of the opposite parties, and shall specify the party, if any, whom he is liable to indemnify.

References in commentary : paragraphs 73, 259.

Procedure in connected cases.

37. (*1*) Where two or more cases pending before a Commissioner arise out of the same accident, and any issue involved is common to two or more such cases, such cases may, so far as the evidence bearing on such issue is concerned, be heard simultaneously.

(2) Where action is taken under sub-rule (1), the evidence bearing on the common issue or issues shall be recorded on the record of one case, and the Commissioner shall certify under his hand on the records of any such other case the extent to which the evidence so recorded applies to such other case, and the fact that the parties to such other case had the opportunity of being present, and, if they were present of cross-examining the witnesses.

Reference in commentary : paragraph **264.**

38. Save as otherwise expressly provided in the Act or these rules the following provisions of the First Schedule to the Code of Civil Procedure, 1908, namely, those contained in Order V, rules 9 to 30; Order VII, rules 9 to 18; Order IX; Order XIII; Order XVI; Order XVII; and Order XXIII, rules 1 and 2, shall apply to proceedings before Commissioners, in so far as they may be applicable thereto :

Certain provisions of Code of Civil Procedure, 1908, apply.

Provided that—

(a) for the purpose of facilitating the application of the said provisions, the Commissioner may construe them with such alterations not affecting the substance as may be necessary or proper to adapt them to the matter before him ;

(b) the Commissioner may, for sufficient reason, proceed otherwise than in accordance with the said provisions if he is satisfied that the interests of the parties will not thereby be prejudiced.

Reference in commentary : paragraph 265.

38-A. Any form, other than a receipt for compensation, which is by these rules required to be signed by a Commissioner may be signed under his direction and on his behalf by any officer subordinate to him appointed by him in writing for this purpose.

Provision regarding signature of forms.

39. The provisions of this Part, except those contained in rules 23, 24 and 36 shall as far as may be, apply in the case of any proceedings relating to the apportionment of compensation among dependants of a deceased workman.

Apportionment of compensation among dependants

Reference in commentary : paragraph **297.**

PART VI.

TRANSFER.

Transfer for report.

40. (*1*) A Commissioner transferring any matter to another Commissioner for report in accordance with sub-section (*2*) of section 21 shall, along with the documents referred to in that sub-section, transmit to such other Commissioner a concise statement, in the form of questions for answer, of the matter on which report is required.

(*2*) A Commissioner to whom a case is so transferred for report shall not be required to report on any question of law.

Reference in commentary : paragraph 305.

Transmission of money.

41. Money transmitted by one Commissioner to another in accordance with sub-section (*2*) of section 21 shall be transmitted either by remittance transfer receipt, or by money order, or by messenger, as the Commissioner transmitting the money may direct.

References in commentary : paragraphs 305, 306.

PART VII.

APPOINTMENT OF REPRESENTATIVES.

When representative must be appointed.

42. Where any party to a proceeding is under the age of 15 years or is unable to make an appearance, the Commissioner shall appoint some suitable person, who consents to the appointment, to represent such party for the purposes of the proceeding.

References in commentary : paragraphs 234-261.

When new representative to be appointed.

43. If the Commissioner considers that the interests of any party for whom a representative has been appointed under rule 42 are not being adequately protected by that representative, or if a person appointed to act as representative dies, or becomes incapable of acting, or otherwise ceases to act as such, the Commissioner shall appoint in his place another person who consents to the appointment.

Reference in commentary : paragraph 261.

PART VIII.

RECORD OF MEMORANDA OF AGREEMENT.

44. Memoranda of agreement sent to the Commissioner under sub-section (*1*) of section 28 shall unless the Commissioner otherwise directs be in duplicate, and shall be in as close conformity as the circumstances of the case admit with Form K or Form L or Form M as the case may be.

Form of memorandum.

References in commentary : paragraphs **218-9.**

45. (*1*) On receiving a memorandum of agreement, the Commissioner shall, unless he considers that there are grounds for refusing to record the memorandum, fix a date for recording the same, and shall issue a notice in writing in Form N to the parties concerned that in default of objections he proposes to record the memorandum on the date so fixed :

Procedure where Commissioner does not consider that he should refuse to record memorandum

Provided that the notice may be communicated orally to any parties who are present at the time when notice in writing would otherwise issue.

(*2*) On the date so fixed, the Commissioner shall record the memorandum unless, after hearing any of the parties who appear and desire to be heard, he considers that it ought not to be recorded :

Provided that the issue of a notice under sub-rule (*1*) shall not be deemed to prevent the Commissioner from refusing to record the memorandum on the date so fixed even if no objection be made by any party concerned.

(*3*) If on such date the Commissioner decides that the memorandum ought not to be recorded, he shall inform the parties present of his decision and of the reasons therefor, and, if any party desiring the memorandum to be recorded is not present, he shall send information to that party in Form O.

References in commentary : paragraphs **221,** 223.

46. (*1*) If, on receiving a memorandum of agreement, the Commissioner considers that there are grounds for refusing to record the same, he shall fix a date for hearing the party or parties desiring the memorandum to be recorded, and shall inform such party or parties and, if he thinks fit, any other party concerned, of the date so fixed and of the grounds on which he considers that the memorandum should not be recorded.

Procedure where Commissioner considers he should refuse to record memorandum.

(*2*) If the parties to be informed are not present, a written notice shall be sent to them in Form P or Form Q, as the case may be, and the date fixed in such notice shall be not less than seven days after the date of the issue of the same.

(*3*) If, on the date fixed under sub-rule (*1*), the party or parties desiring the memorandum to be recorded show adequate cause for proceeding to the record of the same, the Commissioner may, if information has already been given to all the parties concerned, record the agreement. If information has not been given to all such parties, he shall proceed in accordance with rule 45.

(*4*) If, on the date so fixed, the Commissioner refuses to record the memorandum, he shall send notice in Form O to any party who did not receive information under sub-rule (*1*).

Reference in commentary: paragraph 221.

Procedure on refusal to record memorandum.

47. (*1*) If in any case the Commissioner refuses to record a memorandum of agreement, he shall briefly record his reasons for such refusal.

(*2*) If the Commissioner refuses to record a memorandum of agreement, he shall not pass any order directing the payment of any sum or amount over and above the sum specified in the agreement, unless opportunity has been given to the party liable to pay such sum to show cause why it should not be paid.

(*3*) Where the agreement is for the redemption of half-monthly payments by the payment of a lump sum, and the Commissioner considers that the memorandum of agreement should not be recorded by reason of the inadequacy of the amount of such sum as fixed in the agreement, he shall record his estimate of the probable duration of the disablement of the workman.

References in commentary: paragraphs 225, 226, 227.

Registration of memorandum accepted for record.

48. In recording a memorandum of agreement, the Commissioner shall cause the same to be entered in a register in Form R, and shall cause an endorsement to be entered under his signature on a copy of the memorandum to be retained by him in the following terms, namely:—

"This memorandum of agreement bearing Serial No. of 19 in the register has been recorded this day of

(Signature)

Commissioner."

References in commentary: paragraphs 218, 222.

FORM A.

[*See rule* 6 (1).]

DEPOSIT OF COMPENSATION FOR FATAL ACCIDENT.

[*Section* 8 (1) *of the Workmen's Compensation Act*, 1923.]

Compensation amounting to Rs.————————is hereby presented for deposit in respect of injuries resulting in the death of the workman, whose particulars are given below, which occurred on

————————

Name————————

Father's name————————

(Husband's name in case of married woman or widow.)

Caste————————

Local address ——————————————

Permanent address——————————————

$\frac{\text{His}}{\text{Her}}$ monthly wages are estimated at Rs.———— $\frac{\text{He}}{\text{She}}$ was $\frac{\text{over}}{\text{under}}$ the age of 15 years at the time of $\frac{\text{his}}{\text{her}}$ death.

2. The said workman had, prior to the date of $\frac{\text{his}}{\text{her}}$ death received the following payments, namely:—

Rs.————on————Rs.————on————

Rs.————on————Rs.————on————

Rs.————on————Rs.————on————

amounting in all to Rs.————

3. An advance of Rs.————has been mad on account of compensation to————being $\frac{\text{his}}{\text{her}}$ dependant.

4. *I do not desire to be made a party to the proceedings for distribution of the aforesaid compensation.

Dated 19 .

————————

Employer.

*An employer desiring to be made a party to the proceedings should strike out the words "do not."

FORM AA.

[*See rule* 6 (1).]

DEPOSIT OF COMPENSATION FOR NON-FATAL ACCIDENT TO A WOMAN OR PERSON UNDER LEGAL DISABILITY.

[*Section* 8 (1) *of the Workmen's Compensation Act.*]

Compensation amounting to Rs.————is hereby presented for deposit in respect of injuries sustained by————residing at————on————19 , resulting in $\frac{\text{the loss}}{\text{temporary}}$ $\frac{\text{of}}{\text{disablement.}}$. $\frac{\text{His}}{\text{Her}}$ monthly wages are estimated at Rs.———— . $\frac{\text{He}}{\text{She}}$ was $\frac{\text{over}}{\text{under}}$ the age of 15 years at the time of the accident.

2. The said injured workman has prior to the date of the deposit received the following half monthly payments, namely:—

Rs.————on————Rs.————on————

Rs.————on————Rs.————on————

Rs.————on————Rs.————on————

————

Employer.

Dated 19 .

FORM B.

(*See rule* 6.]

RECEIPT FOR COMPENSATION.

[*Deposited under section* 8 (1) *of the Workmen's Compensation Act*, 1923.]

Book No. Receipt No. Register No.

Depositor————

Deceased or injured workman————

Date of deposit————19 .

Sum deposited Rs. ————

————

Commissioner.

FORM C.

[*See rule* 6.]

STATEMENT OF DISBURSEMENTS.

[*Section* 8 (4) *of the Workmen's Compensation Act*, 1923.]

Serial No———

Depositor———

Date.	Rs.
Amount deposited	
Amount deducted and repaid to the employer under the proviso to section 8 (1)	
Funeral expenses paid	
Compensation paid to the following dependants :—	
Name. Relationship.	
Total ..	

———

Commissioner.

Dated———19 .

FORM D.

[*See rule* 9.]

DEPOSIT OF COMPENSATION FOR NON-FATAL ACCIDENTS, OTHER THAN TO A WOMAN OR PERSON UNDER LEGAL DISABILITY.

[*Section* 8 (2) *of the Workmen's Compensation Act*, 1923.]

Compensation amounting to Rs.————is hereby presented for deposit in respect of $\frac{\text{permanent}}{\text{temporary}}$ injuries sustained by———— residing at————which occurred on ————19 .

————
Employer.

Dated————19 .

FORM E.

[*See rule* 9.]

RECEIPT FOR COMPENSATION.

[*Deposited under section* 8 (2) *of the Workmen's Compensation Act*, 1923.]

Book No. Receipt No. Register No.

Depositor————

In favour of————

Date of deposit————19 .

Sum deposited Rs.—

————
Commissioner.

FORM EE.

[*See rule* 11.]

REPORT OF FATAL ACCIDENTS.

To

————

SIR,

I have the honour to submit the following report of an accident which occurred on————(date), at————(here enter details of premises)————and which resulted in the death of the $\frac{\text{workman}}{\text{workmen}}$ of whom particulars are given in the statement annexed.

2. The circumstances attending the death of the $\frac{\text{workman}}{\text{workmen}}$ were as under :—

(*a*) Time of the accident :

(*b*) Place where the accident occurred :

(*c*) Manner in which deceased $\frac{\text{was}}{\text{were}}$ employed at the time :

(*d*) Cause of the accident :

(*e*) Any other relevant particulars.

I have, etc.,

Signature and designation of person making the report.

Statement.

Name.	Sex.	Age.	Nature of employment.	Full postal address.

FORM F.

[*See rule* 19.]

APPLICATION FOR COMPENSATION BY WORKMAN.

To the Commissioner for Workmen's Compensation,

residing at ——————————————, applicant

versus

residing at ——————————————, opposite party.

It is hereby submitted that—

(1) the applicant, a workman employed by (a contractor with) the opposite party on the————day of———— ————19————received personal injury by accident arising out of and in the course of his employment.

The cause of the injury was (*here insert briefly in ordinary language the cause of the injury*)————————

(2) the applicant sustained the following injuries, namely:—

(3) the monthly wages of the applicant amount to Rs.——— the applicant is $\frac{\text{over}}{\text{under}}$ the age of 15 years.

*(4) (*a*) Notice of the accident was served on the————day of————

(*b*) Notice was served as soon as practicable.

(*c*) Notice of the accident was not served (in due time) by reason of————

(5) the applicant is accordingly entitled to receive—

(*a*) half-monthly payments of Rs.———from the ——— day of————19————to ————

(*b*) a lump sum payment of Rs.————

(6) the applicant has taken the following steps to secure a settlement by agreement namely ————

but it has proved impossible to settle the questions in dispute because————

*You are therefore requested to determine the following questions in dispute, namely:—

(*a*) whether the applicant is a workman within the meaning of the Act;

(*b*) whether the accident arose out of or in the course of the applicant's employment;

(*c*) whether the amount of compensation claimed is due, or any part of that amount;

(*d*) whether the opposite party is liable to pay such compensation as is due;

(*e*) etc. (as required).

————*Applicant.*

Dated the————

*Strike out the clauses which are not applicable.

FORM G.

[*See rule* 19.]

APPLICATION FOR ORDER TO DEPOSIT COMPENSATION.

To the Commissioner for Workmen's Compensation.

———— ————residing at ———— ————, applicant

versus

————residing at ———— ————, opposite party.

It is hereby submitted that—

(1)————a workman employed by (a contractor with) the opposite party on the———— ————day of————19————received personal injury by accident arising out of and in the course of his employment resulting in his death on the————day of————19——. The cause of the injury was (*here insert briefly in ordinary language the cause of the injury*)————

(2) The applicant(s) $\frac{\text{is a}}{\text{are}}$ dependant(s) of the deceased workman being his————.

(3) The monthly wages of the deceased amount to Rs.———— The deceased was $\frac{\text{over}}{\text{under}}$ the age of 15 years at the time of his death.

*(4) (*a*) Notice of the accident was served on the———— day of————

(*b*) Notice was served as soon as practicable.

(*c*) Notice of the accident was not served (in due time) by reason of————

(5) The deceased before his death received as compensation the total sum of Rs.————

(6) The applicant(s) $\frac{\text{is}}{\text{are}}$ accordingly entitled to receive a lump sum payment of Rs ————

You are therefore requested to award to the applicant the said compensation or any other compensation to which he may be entitled.

————*Applicant.*

Dated the————

*Strike out the clauses which are not applicable.

FORM H.

[*See rule* 19.]

APPLICATION FOR COMMUTATION.

(*Under section* 7 *of the Workmen's Compensation Act*, 1923.)

To the Commissioner for Workmen's Compensation,

_____

_____residing at

_____, applicant

versus

_____residing at

_____, opposite party

It is hereby submitted that—

(1) The $\frac{\text{applicant}}{\text{opposite party}}$ has been in receipt of half-monthly payments from_____to_____in respect of temporary disablement by accident arising out of and in the course of his employment.

(2) The applicant is desirous that the right to receive half-monthly payments should be redeemed.

(3) (*a*) The opposite party is unwilling to agree to the redemption of the right to receive half-monthly payments.

(*b*) The parties have been unable to agree regarding the sum for which the right to receive half-monthly payments should be redeemed.

You are therefore requested to pass orders—

(*a*) directing that the right to receive half-monthly payments should be redeemed;

(*b*) fixing a sum for the redemption of the right to receive half-monthly payments.

_____*Applicant.*

*Dated*_____

FORM J.

[*See rule* 36.]

NOTICE.

Whereas a claim for compensation has been made by—applicant, against————and the said———— has claimed that you are liable under section 12 (2) of the Workmen's Compensation Act, 1923, to indemnify him against any compensation which he may be liable to pay in respect of the aforesaid claim, you are hereby informed that you may appear before me on————and contest the claim for compensation made by the said applicant or the claim for indemnity made by the opposite party. In default of your appearance you will be deemed to admit the validity of any award made against the opposite party and your liability to indemnify the opposite party for any compensation recovered from him.

Commissioner.

Dated————19 .

FORM JJ.

[*See rule* 36.]

NOTICE.

Whereas a claim for compensation has been made by———— applicant, against————and the said———— has claimed that————is liable under section 12 (2) of the Workmen's Compensation Act, 1923, to indemnify him against any compensation which he may be liable to pay in respect of the aforesaid claim, and whereas the said————on notice served has claimed that you————stand to him in the relation of a contractor from whom the applicant ————could have recovered compensation you are hereby informed that you may appear before me on————and contest the claim for compensation made by the said applicant or the claim for indemnity made by the opposite party————. In default of your appearance you will be deemed to admit the validity of any award made against the opposite party————and your liability to indemnify the opposite party————for any compensation recovered from him.

Commissioner.

Dated————

FORM K.

[*See rule* 44.]

MEMORANDUM OF AGREEMENT.

It is hereby submitted that on the————————day of————19————,personal injury was caused to————residing at————by accident arising out of and in the course of employment in————. The said injury has resulted in temporary disablement to the said workman whereby it is estimated that he will be prevented from earning more than / any of his previous wages for a period of——months. The said workman has been in receipt of half-monthly payments which have continued from the————day of————19————until the————day of————19————, amounting to Rs.————in all. The said workman's monthly wages are estimated at Rs.———— The workman is over the age of 15 years / will reach the age of 15 years on————.

It is further submitted that————the employer of the said workman, has agreed to pay, and the said workman has agreed to accept the sum of Rs.————in full settlement of all and every claim under the Workmen's Compensation Act, 1923, in respect of all disablement of a temporary nature arising out of the said accident, whether now or hereafter to become manifest. It is therefore requested that this memorandum be duly recorded.

Dated————

Signature of employer————

Witness————

Signature of workman————

Witness————

(NOTE.—An application to register an agreement can be presented under the signature of one party, provided that the other party has agreed to the terms. But both signatures should be appended, whenever possible.

Receipt (to be filled in when the money has actually been paid).

In accordance with the above agreement, I have this day received the sum of Rs.————

————Workman.

Dated————19 .

The money has been paid and this receipt signed in my presence.

————Witness.

NOTE.—This form may be varied to suit special cases, *e.g.*, injury by occupational disease, agreement when workman is under legal disability, etc.

FORM L.

[*See rule* 44.]

MEMORANDUM OF AGREEMENT.

It is hereby submitted that on the———day of———— 19 , personal injury was caused to————, residing at ————, by accident arising out of and in the course of his employment in————

———————————————————————

The said injury has resulted in permanent disablement to the said workman of the following nature, namely :———— The said workman's monthly wages are estimated at Rs.———— The workman $\frac{\text{is over the age of 15 years}}{\text{will reach the age of 15 years on}}$———— The said workman has, prior to the date of this agreement, received the following payments, namely :—

Rs.————on————Rs.————on————

Rs.————on————Rs.————on————

Rs————on————Rs.————on————

It is further submitted that————, the employer of the said workman, has agreed to pay, and the said workman has agreed to accept the sum of Rs.————in full settlement of all and every claim under the Workmen's Compensation Act, 1923, in respect of the disablement stated above and all disablement now manifest. It is therefore requested that this memorandum be duly recorded.

Dated————

Signature of employer ————————————————

Witness ————————————————

Signature of workman ————————————————

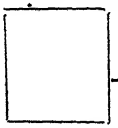
Witness ————————————————

———————————————————————

(NOTE.—An application to register an agreement can be presented under the signature of one party, provided that the other party has agreed to the terms. But both signatures should be appended, whenever possible.

Receipt (to be filled in when the money has actually been paid).

In accordance with the above agreement, I have this day received the sum of Rs.————.



————Workman.

Dated————19 .

The money has been paid and this receipt signed in my presence.

————Witness.

NOTE.—This form may be varied to suit special cases, *e.g.*, injury by occupational disease, agreement when workman is under legal disability, etc.

FORM M.

[*See rule* 44.]

MEMORANDUM OF AGREEMENT.

It is hereby submitted that on the————day of————19——, personal injury was caused to————, residing at———— by accident arising out of and in the course of employment in——

The said injury has resulted in temporary disablement to the said workman, who is at present in receipt of $\frac{\text{wages amounting to Rs. —per month.}}{\text{no wages.}}$

The said workman's monthly wages prior to the accident are estimated at Rs.————. The workman is subject to a legal disability by reason of————.

It is further submitted that————the employer of the workman has agreed to pay and———— on behalf of the said workman has agreed to accept half-monthly payments at the rate of Rs.————for the period of the said temporary disablement. This agreement is subject to the condition that the amount of the half-monthly payments may be varied in accordance with the provisions of the said Act on account of an alteration in the earnings of the said workman during disablement. It is further stipulated that all rights of commutation

under section 7 of the said Act are unaffected by this agreement. It is therefore requested that this memorandum be duly recorded.

Dated——————.

Signature of employer ——————

Witness ——————

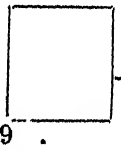
Signature of workman ——————

Witness ——————

(NOTE.—An application to register an agreement can be presented under the signature of one party, provided that the other party has agreed to the terms. But both signatures should be appended, whenever possible.)

Receipt (to be filled in when the money has actually been paid).

In accordance with the above agreement, I have this day received the sum of Rs.——————.



——————Workman.

Dated——————19 .

The money has been paid and this receipt signed in my presence.

——————Witness.

NOTE.—This form may be varied to suit special cases, *e.g.*, injury by occupational disease, etc.

FORM N.

[*See rule* 45.]

Whereas an agreement to pay compensation is said to have been reached between—————— and ——————and whereas ——————

$\frac{\text{has}}{\text{have}}$ applied for registration of the agreement under section 28 of the Workmen's Compensation Act, 1923, notice is hereby given that the said agreement will be taken into consideration on———— ——————19 , and that any objections to the registration of the said agreement should be made on that date. In the absence of valid objections, it is my intention to proceed to the registration of the agreement.

——————

Commissioner.

Dated——————19 .

FORM O.

[*See rules* 45 *and* 46.]

Take notice that registration of the agreement to pay compensation said to have been reached between you——————— and———————on the———————19 , has been refused for the following reasons, namely :—

———————————————————————

———————————————————————

———————————————————————

———————

Commissioner.

Dated———————19 .

FORM P.

[*See rule* 46.]

Whereas an agreement to pay compensation is said to have been reached between———————and ———————and whereas——————— has/have applied for registration of the agreement under section 28 of the Workmen's Compensation Act, 1923, and whereas it appears to me that the said agreement ought not to be registered for the following reasons, namely :—

———————————————————————

an opportunity will be afforded to you of showing cause on——— 19 , why the said agreement should be registered. If no adequate cause is shown on that date, registration of the agreement will be refused.

———————

Commissioner.

Dated———————19 .

FORM Q.

[*See rule* 46.]

Whereas an agreement to pay compensation is said to have been reached between———————and——————— and whereas——————— has/have applied for registration f the agreement under section 28 of the Workmen's Compensation Act, 1923, and whereas it appears to me that the said

agreement ought not to be registered for the following reasons, namely :—

---

an opportunity will be afforded to the said———— of showing cause on————19 , why the said agreement should be registered. Any representation which you have to make with regard to the said agreement should be made on that date. If adequate cause is then shown, the agreement may be registered.

Commissioner.

Dated————19 .

FORM R.

[*See rule* 48.]

Register of agreements for the year 19 .

Serial number.	Date of agreement.	Date of registration.	Employer.	Workman.	Initials of Commissioner.	Reference to orders rectifying the register.

THE WORKMEN'S COMPENSATION (TRANSFER OF MONEY) RULES, 1935*

PART I.—*General.*

1. These rules may be called the Workmen's Compensation (Transfer of Money) Rules, 1935.

2. In these rules, unless there is anything repugnant in the subject or context—

(*a*) " the Act " means the Workmen's Compensation Act, 1923,

(*b*) " authorised officer " means any officer whom the local Government may designate either generally or in respect of any area or class of cases, for the purpose of performing the functions assigned by these rules to the authorised officer,

(*c*) " transferring authority " means any authority in any part of His Majesty's Dominions or in any other country who transfers or causes to be transferred any lump sum awarded under the law relating to workmen's compensation in such part or country and applicable for the benefit of any person residing or about to reside in British India.

3. When any sum is transmitted by any authority in British India to any other authority in accordance with these rules, the cost of such transmission may be deducted from the sum so transmitted.

4. Money transmitted by any authority in British India to any other authority in British India in accordance with these rules, shall be transmitted by one of the methods prescribed in rule 41 of the Workmen's Compensation Rules, 1924.

PART II.—*Transfer of money paid to a Commissioner for the benefit of any person residing or about to reside in another country.*

5. When the whole or any part of a lump sum deposited with a Commissioner for payment as compensation under the Act is payable to any person or persons residing or about to reside in any other country, the Commissioner may order the transfer to that country of the sum so payable.

---

* Promulgated in Government of India, Department of Industries and Labour, Notification No. L.-3033, dated the 13th March 1930.

6. When the Commissioner has ordered the transfer of any sum under rule 5, he shall cause to be prepared and shall certify under his hand a memorandum containing a brief statement of the facts of the case, of the orders passed upon it, and of the name and address of each person to whom payment is to be made.

7. If the Commissioner is not himself the authorised officer he shall forward the memorandum in duplicate to the authorised officer and may either remit the sum to be transferred to the authorised officer or retain it and dispose of it in accordance with directions of the authorised officer. If the Commissioner is himself the authorised officer, he shall proceed as provided in rule 8.

8. The authorised officer, after satisfying himself that the memorandum is complete, shall forward it, and remit or cause to be remitted the sum to which it relates by such means of safe transmission as he may consider convenient to the authority appointed in this behalf for the country to which the sum is to be transferred, or if no such authority has been appointed, to such authority as the local Government may by general or special order direct, and shall at the same time request the authority addressed:

(*a*) to arrange for payment to be made in accordance with directions contained in the memorandum; and

(*b*) to furnish him with a report of the action taken upon the memorandum and return any sum the payment of which is for any reason impossible.

9. (1) The authorised officer shall, if he is not the Commissioner with whom the matter originated, forward to such Commissioner a copy of any report received in response to a request made under rule 8.

(2) Any sum returned in accordance with rule 8 shall be disposed of in accordance with the Act.

PART III.—*Receipt and administration in British India of any money awarded under the law relating to workmen's compensation in another country.*

10. (1) The authorised officer shall be the proper authority to receive moneys from transferring authorities.

(2) If any Commissioner or other Government servant, not being the authorised officer, receives any sum from a transferring authority he shall either forward such sum, together with any papers relating thereto, to the authorised officer for disposal or obtain the instructions of the authorised officer as to the disposal of the sum and papers and act in accordance with his instructions,

11. The authorised officer may himself dispose of any sum or part of any sum which he receives or of which he assumes control under rule 10 or may send it or any part of it for disposal to such Commissioner or Commissioners as he considers proper.

12. All sums received from a transferring authority shall be disposed of as far as possible in accordance with the provisions of the Act and the Workmen's Compensation Rules, 1924:

Provided that the directions, if any, received from the transferring authority as to the manner in which the sum should be administered shall be complied with.

13. (1) The authorised officer shall forward to the transferring authority a report showing how the sum received from him has been disposed of.

(2) Any Commissioner, not being the authorised officer, who has disposed of any part of the sum, shall make a report in duplicate as to the disposal of that part to the authorised officer, and, if the sum was received by him from another such Commissioner acting in accordance with section 21 of the Act, shall forward his report through that Commissioner.

14. Any part of the sum received from the transferring authority which shall have remained undisbursed after the completion of the proceedings shall be returned to the transferring authority by, or under the direction of, the authorised officer.

CODE OF CIVIL PROCEDURE

(ACT V OF 1908.)

FIRST SCHEDULE*

ORDER V.

Issue and Service of Summons.

* * * * * *

Service of Summons.

Delivery or transmission of summons for service.

9. (*1*) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.

(*2*) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.

Mode of service.

10. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Service on several defendants.

11. Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

Service to be on defendant in person when practicable or on his agent.

12. Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

Service on agent by whom defendant carries on business.

13. (*1*) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(*2*) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

---

*See Workmen's Compensation Rules, rule 38.

14. Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property. Service on agent in charge in suits for immovable property.

15. Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him. Where service may be on male member of defendant's family.

Explanation.—A servant is not a member of the family within the meaning of this rule.

16. Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons. Person served to sign acknowledgment.

17. Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed. Procedure when defendant refuses to accept service, or cannot be found.

18. The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons. Endorsement of time and manner of service.

19. Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, Examination of serving officer.

examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Substituted service.

20. (*1*) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

Effect of substituted service.

(*2*) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

Where service substituted, time for appearance to be fixed.

(*3*) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

Service of summons where defendant resides within jurisdiction of another Court.

21. A summons may be sent by the Court by which it is issued, whether within or without the province, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

Service within Presidency-towns and Rangoon, of summons issued by Courts outside.

22. Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

Duty of Court to which summons is sent.

23. The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

24. Where the defendant is confined in a prison, the summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant. Service on defendant in prison.

25. Where the defendant resides out of British India and has no agent in British India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate. Service where defendant resides out of British India and has no agent.

26. Where— Service in foreign territory through Political Agent or Court.

(*a*) in the exercise of any foreign jurisdiction vested in His Majesty or in the Governor-General in Council, a Political Agent has been appointed, or a Court had been established or continued, with power to serve a summons isued by a Court under this Code in any foreign territory in which the defendant resides, or

(*b*) the Governor-General in Council has, by notification in the *Gazette of India* declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service,

the summons may be sent to such Political Agent or Court, by post or otherwise, for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement signed by such Political Agent or by the Judge or other officer of the Court that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

27. Where the defendant is a public officer (not belonging to His Majesty's military, naval or air forces or His Majesty's Indian Marine Service), or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant. Service on civil public officer or on servant of railway company or local authority.

28. Where the defendant is a soldier or airman, the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant. Service on soldiers or airmen.

First Schedule. Orders V and VII.

Duty of person to whom summons is delivered or sent for service.

29. (*1*) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgment of the defendant, and such signature shall be deemed to be evidence of service.

(*2*) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

Substitution of letter for summons.

30. (*1*) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.

(*2*) A letter substituted under sub-rule (*1*) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (*3*), shall be treated in all respects as a summons.

(*3*) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

ORDER VII.

Plaint.

* * * * * *

Procedure on admitting plaint.

9. (*1*) The plaintiff shall endorse on the plaint or annex thereto, a list of the documents (if any) which he has produced along with it; and, if the plaint is admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements.

Concise statements.

(*2*) Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

(*3*) The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

(*4*) The chief ministerial officer of the Court shall sign such list and copies or statements if, on examination, he finds them to be correct.

Return of plaint.

10. (*1*) The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Procedure on returning plaint.

(*2*) On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

Rejection of plaint.

11. The plaint shall be rejected in the following cases:—

(*a*) where it does not disclose a cause of action;

(*b*) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(*c*) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(*d*) where the suit appears from the statement in the plaint to be barred by any law.

Procedure on rejecting plaint.

12. Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order.

Where rejection of plaint does not preclude presentation of fresh plaint.

13. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

Documents Relied on in Plaint.

Production of document on which plaintiff sues.

14. (*1*) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

List of other documents.

(*2*) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

Statement in case of documents not in plaintiff's possession or power.

15. Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is.

Suits on lost negotiable instruments.

16. When the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

Production of shop-book.

17. (*1*) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891, where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

Original to be marked and returned.

(*2*) The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

Inadmissibility of document not produced when plaint filed.

18. (*1*) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(*2*) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

First Schedule.

ORDER IX

Appearance of Parties and Consequence of Non-appearance.

Parties to appear on day fixed in summons for defendant to appear and answer.

1. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.

2. Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, the Court may make an order that the suit be dismissed:

Provided that no such order shall be made although the summons has not been served upon the defendant, if on the day fixed for him to appear and answer he attends in person or by agent when he is allowed to appear by agent.

Where neither party appears suit to be dismissed.

3. Where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed.

Plaintiff may bring fresh suit or Court may restore suit to file.

4. Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

Dismissal of suit where plaintiff, after summons returned unserved, fails for three months to apply for fresh summons.

5. (*1*) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of three months from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that—

(*a*) he has failed after using his best endeavours to discover the residence of the defendant who has not been served, or

(*b*) such defendant is avoiding service of process, or

(*c*) there is any other sufficient cause for extending the time,

in which case the Court may extend the time for making such application for such period as it thinks fit.

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

Procedure when only plaintiff appears.

6. (*1*) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—

When summons duly served.

(*a*) if it is proved that the summons was duly served, the Court may proceed *ex parte*;

When summons not duly served.

(*b*) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

When summons served, but not in due time.

(*c*) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(*2*) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.

7. Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

Procedure where defendant only appears.

8. Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and,

where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Decree against plaintiff by default bars fresh suit.

9. (*1*) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(*2*) No order shall be made under this rule unless notice of the application has been served on the opposite party.

Procedure in case of non-attendance of one or more of several plaintiffs.

10. Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

Procedure in case of non-attendance of one or more of several defendants.

11. Where there are more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

12. Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear.

Setting aside Decrees Exparte.

Setting aside decree *ex parte* against defendant.

13. In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also.

No decree to be set aside without notice to opposite party.

14. No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

ORDER XIII

Production, Impounding and Return of Documents.

Documentary evidence to be produced at first hearing.

1. (*1*) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(*2*) The Court shall receive the documents so produced: Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

Effect of non-production of documents.

2. No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof, and the Court receiving any such evidence shall record the reasons for so doing.

Rejection of irrelevant or inadmissible documents.

3. The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Endorsements on documents admitted in evidence.

4. (*1*) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:—

(*a*) the number and title of the suit,

(*b*) the name of the person producing the document,

(*c*) the date on which it was produced, and

(*d*) a statement of its having been so admitted;

and the endorsement shall be signed or initialled by the Judge.

(*2*) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

First Schedule. Order XIII.

Endorsements on copies of admitted entries in books, accounts and records.

5. (*1*) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891, where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(*2*) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

(*a*) where the record, book or account is produced on behalf of a party, then by that party, or

(*b*) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(*3*) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

Endorsements on documents rejected as inadmissible in evidence.

6. Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (*a*), (*b*) and (*c*) of rule 4, sub-rule (*1*), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

Recording of admitted and return of rejected documents.

7. (*1*) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(*2*) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

Court may order any document to be impounded.

8. Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

Return of admitted documents.

9. (*1*) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,—

(*a*) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

(*b*) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so:

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(*2*) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

Court may send for papers from its own records or from other Courts.

10. (*1*) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(*2*) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(*3*) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

Provisions as to documents applied to material objects.

11. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

ORDER XVI.

Summoning and Attendance of Witnesses.

Summons to attend to give evidence or produce documents.

1. At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

Expenses of witness to be paid into Court on applying for summons.

2. (*1*) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

Experts.

(*2*) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

Scale of expenses.

(*3*) Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

Tender of expenses to witness.

3. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Procedure where insufficient sum paid in.

4. (*1*) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons; or the Court may discharge the person summoned, without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Expenses of witnesses detained more than one day.

(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit

being made, may order such sum to be levied by attachment and sale of the movable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Time, place and purpose of attendance to be specified in summons.

5. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

Summons to produce document.

6. Any person may be summoned to produce a document without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

Power to require persons present in Court to give evidence or produce document.

7. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

Summons how served.

8. Every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

Time for serving summons.

9. Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Procedure where witness fails to comply with summons.

10. (*1*) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

(*2*) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without

lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(*3*) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.

If witness appears, attachment may be withdrawn.

11. Where, at any time after the attachment of his property, such person appears and satisfies the Court,—

(*a*) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and,

(*b*) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

Procedure if witness fails to appear.

12. The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

Mode of attachment.

13. The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are

applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

Court may of its own accord summon as witnesses strangers to suit.

14. Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Duty of persons summoned to give evidence or produce document.

15. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

When they may depart.

16. (*1*) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(*2*) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

Application of rules 10 to 13.

17. The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

Procedure where witness apprehended cannot give evidence or produce document.

18. Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

19. No one shall be ordered to attend in person to give evidence unless he resides— No witness to be ordered to attend in person unless resident within certain limits.

(*a*) within the local limits of the Court's ordinary original jurisdiction, or

(*b*) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

20. Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit. Consequence of refusal of party to give evidence when called on by Court.

21. Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable. Rules as to witnesses to apply to parties summoned.

ORDER XVII

Adjournments.

1. (*1*) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit. Court may grant time and adjourn hearing.

(*2*) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment: Costs of adjournment.

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

2. Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit. Procedure if parties fail to appear on day fixed.

Court may proceed notwithstanding either party fails to produce evidence, etc.

3. Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

ORDER XXIII

Withdrawal and Adjustment of Suits.

Withdrawal of suit or abandonment of part of claim.

1. (*1*) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

(*2*) Where the Court is satisfied—

(*a*) that a suit must fail by reason of some formal defect, or

(*b*) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

(*3*) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-rule (*2*), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(*4*) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

Limitation law not affected by first suit.

2. In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

WORKMEN'S COMPENSATION RETURNS*

In exercise of the powers conferred by section 16 of the Workmen's Compensation Act, 1923 (VIII of 1923), and in supersession of the Notification of the Government of India in the Department of Industries and Labour, No. L.-1189, dated the 26th June 1924, the Governor General in Council is pleased to direct that an annual return in the form set forth in the Schedule hereto annexed shall be furnished by every person employing workmen who are :—

(A) employed in a place which is a factory within the meaning of clause (*j*) of section 2 of the Factories Act, 1934;

(B) employed within the meaning of clause (*d*) of section 3 of the Indian Mines Act, 1923, in any mine which is subject to the operation of that Act;

(C) employed as railway servants otherwise than in a factory or mine;

(D) employed, otherwise than in a clerical capacity or in a factory or mine, in connection with the operation or maintenance of a tramway as defined in section 3 of the Indian Tramways Act, 1886;

(E) employed in any of the following categories but not falling under any of the foregoing heads (A), (B), (C) and (D) :—

(*i*) otherwise than in a clerical capacity in the service of any Port Trust or Port Commission within the limits of any port subject to the Indian Ports Act, 1908;

(*ii*) in the manufacture or handling of explosives in any premises wherein, or within the precincts whereof, on any one day of the preceding twelve months, ten or more persons have been so employed;

(*iii*) in the service of any fire brigade;

(*iv*) otherwise than in a clerical capacity in connection with operations for winning natural petroleum or natural gas;

(*v*) otherwise than in a clerical capacity on any estate which is maintained for the purpose of growing cinchona, coffee, rubber, or tea, and on which on any one day in the preceding twelve months twenty-five or more persons have been so employed;

*Government of India, Department of Industries and Labour, Notification No. L.-1189, dated the 28th March 1935.

(*vi*) otherwise than in a clerical capacity in the generating, transforming or supplying of electrical energy,

(*vii*) in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures.

2. The return, which shall relate to a calendar year, shall be furnished on or before the 1st February following the year to which the return relates, and the first return shall relate to the year 1935.

3. The return shall be signed (*a*) by the employer, or where there is more than one employer by any employer, or (*b*) by any person directly responsible to the employer or employers for the management of the establishment to which it relates.

4. The return shall be furnished :—

(*a*) for workmen of all categories except (C) in paragraph 1—

(*i*) in the Punjab—to the Inspector of Factories ;

(*ii*) in other provinces—to the Commissioner for Workmen's Compensation for the area within which the said workmen are normally employed unless the local Government by notification in the local official Gazette specifies any other authority to whom the return shall be furnished ;

(*b*) for workmen falling in category (C) in paragraph 1—

to the Secretary to the Railway Board (Railway Department), Government of India.

5. When the local Government or the Railway Board so direct the return shall be furnished in duplicate.

6. Notwithstanding anything hereinbefore contained, the aforesaid return is not required to be submitted by any employer in respect of compensation paid on account of injuries suffered by his workmen during any period for which his liability under the Act has been insured with a Mutual Indemnity or other Insurance Company or during which he is a member of an association of employers which deals on behalf of its members with claims for compensation under the Act, if such company or association has with the consent of the local Government undertaken to submit returns as nearly as may be in the form set forth in the Schedule hereto annexed in respect of the employers insured with such company or belonging to such association. Such undertaking shall provide that the said returns shall be submitted not later than the 1st February, or at the discretion of and subject to such conditions as the local Government may impose, the 1st March following the year to which they relate.

SCHEDULE.

WORKMEN'S COMPENSATION.

Returns relating to period from.....to 31st December 19 .

Province
District
Town or village
Post Office
Name of establishment[1]
Nature of work[2]

(To be omitted in case of railways.)

Average numbers[3] *employed per day* { *Adults* / *Minors*

—	Accidents.						Occupational diseases.[8]						
	Number of cases of injuries[4] in respect of which final compensation has been paid during the year.			Amount of compensation[5] paid.			Nature of disease.[9]	Number of cases of diseases[4] in respect of which final compensation has been paid during the year.			Amount of compensation[5] paid.		
	Death.	Permanent Disablement.	Temporary disablement.[6]	Death.	Permanent disablement.	Temporary disablement.[7]		Death.	Permanent disablement.	Temporary disablement.[6]	Death.	Permanent disablement.	Temporary disablement.[7]
				Rs.	Rs.	Rs.					Rs.	Rs.	Rs.
Adults . .													
Minors . .													

Dated——————19 . (*Signed*)——————
(*Designation*)——————

[1] In cases where more establishments than one are owned by the same employer, a separate return should be furnished for each establishment. When in any establishment the workmen employed fall in two or more of the distinct categories to which the return relates [*e.g.*, in the case of a tea estate categories A and E (*v*)] a separate sheet should be used for the statistics of each category.

[2] Enter the class of establishment according to the process or product, *e.g.*, cotton weaving and spinning factory, coal mine.

[3] Include all employees whether permanent or temporary who would, in the case of accidents, be eligible for compensation under the Act and for whom a return is required to be furnished. Numbers employed should be shown even if there are no payments of compensation to report.

[4] Include only those cases in which the *final* payment of compensation was made during the year. A deposit with the Commissioner should be treated as a payment by the employer.

[5] Include all compensation paid in respect of the cases mentioned in footnote 4, whether such compensation was paid during the year or previous to its commencement. Exclude all payments in cases in which the final payment had not been made by the end of the year to which the return relates.

[6] Only such disablements as last for more than seven days should be shown [section 4 (1) D of the Act].

[7] Where the benefit actually allowed (*e.g.*, hospital leave on full pay) is in excess of the compensation admissible under the Act, only the amount of the compensation so admissible should be entered in the return.

[8] *Viz*, anthrax, lead poisoning, phosphorus poisoning, mercury poisoning, benzene poisoning, chrome ulceration and compressed air illness only.

[9] Enter separately each of the diseases specified in footnote [8] which resulted in cases in respect of which compensation was paid.

ASSAM RULES

*Fees.**

1. The following fees shall be payable in respect of proceedngs under the Act—

(*a*) Where compensation is claimed in the form of recurring payments..	Eight annas.
(*b*) Where compensation is claimed in the form of a lump sum .	One rupee where the sum does not exceed Rs. 500 *plus* one rupee for each additional sum of Rs. 500 or fraction thereof.
2. Applications for commutation—	
(*a*) By agreement between the parties..	Eight annas.
(*b*) In all other cases . ..	Two rupees.
3. Applications for the deposit of compensation—	
(*a*) Under section 8 (1) of the Act ..	Nil.
(*b*) Under section 8 (2) of the Act (in respect of each person to whom compensation is payable)..	Eight annas.
4. Applications for distribution by dependants for each dependant ..	One rupee.
5. Application for review—	
(*a*) Where the review claimed is the continuance, increase, decrease or ending of half-monthly payments	Eight annas.
(*b*) Where the half-monthly payments are sought to be converted into lump sum	Two rupees.
(*c*) In all other cases	One rupee.

*The rules relating to both fees and costs were promulgated in Revenue Department Notification No. 1688-R., dated the 18th July 1924.

6.	Applications for the registration of agreements—	
	(*a*) Where the application or the memorandum of agreement is signed by both parties	Nil.
	(*b*) In all other cases	Eight annas.
7.	Applications to summon witness—	
	(*a*) For the first witness mentioned in the application	Eight annas.
	(*b*) For every subsequent witness ..	Four annas.
8.	Applications for indemnification ..	Three rupees.
9.	Application for the recovery of compensation—	
	(*a*) Under an order already passed by the Commissioner	Eight annas.
	(*b*) In all other cases	The same fee as is payable on a similar application for compensation.
10.	All applications not otherwise provided for	Eight annas.

2. In the case of any application falling under head X the Commissioner may, if he thinks fit, permit the application to be made without fee.

3. If in any case the Commissioner considers that he ought to pass orders granting relief of a different kind or to a different extent from that claimed by the applicant, and if the fee which would have been payable by the applicant on an application for the relief which the Commissioner considers to be due is greater than the fee which has actually been paid, the Commissioner may require the applicant to deposit fees to the extent of the difference.

Costs.

(1) Where the Commissioner directs that any costs shall not follow the event, he shall state his reasons in writing.

(2) The costs which may be awarded shall include—

(*a*) the charges necessarily incurred on account of court-fees;

(*b*) the charges necessarily incurred on subsistence to witnesses; and

(*c*) pleader's fee on the scale prescribed in the following rule.

(3) In any proceeding involving an application for compensation in the form of a lump sum, an application for commutation, or an application for indemnification, the fee allowed shall be Rs. 10 subject by special order of the Commissioner to diminution to a sum not less than Rs. 5 and to increase to a sum not more than Rs. 50 for each such proceeding. In all other applications the fee allowed shall be Rs. 5 subject to increase by special order to a sum not exceeding Rs. 20.

(4) When a party engages more pleaders than one to conduct or defend a case, he shall be allowed one set of costs only.

(5) When several defendants having substantially one defence to make employ several pleaders they shall be allowed one set of costs only. In such cases it will be for the applicant, at the time of hearing, to ask for a direction of the court that separate costs be not allowed.

(6) When two or more defendants having separate substantial defences have engaged the services of one pleader, they shall be allowed separate sets of costs. In this case it will be for the defendants interested to apply at the hearing for separate costs.

(7) When several defendants having separate defences are represented by separate pleaders, they shall be entitled to separate costs.

*Statements regarding fatal accidents.**

(1) The notice sent by a Commissioner under sub-section (1) of section 10 A of the Act shall be in Form X and shall be accompanied by a copy of Form Y.

(2) The statement submitted by an employer under section 10 A shall be in Form Y.

*Notification No. 863-G. J., dated the 19th February 1934. The two forms are similar to the forms for the United Provinces (pages 274-5).

BENGAL RULES*

CHAPTER I.

Fees.

1. The following fees shall be payable in respect of proceedings under the Act—

I.	Applications for compensation—	
	(*a*) Where compenation is claimed in the form of recurring payments	Eight annas.
	(*b*) Where compensation is claimed in the form of a lump sum	One rupee where the sum does not exceed Rs. 500 *plus* one rupee for each additional sum of Rs. 500 or fraction thereof.
II.	Applications for commutation—	
	(*a*) By agreement between the parties	Eight annas.
	(*b*) In all other cases ..	Two rupees.
III.	Applications for the deposit of compensation—	
	(*a*) Under section 8 (1) of the Act	Nil.
	(*b*) Under section 8 (2) of the Act (in respect of each person to whom compensation is payable)	Eight annas.
IV.	Applications for distribution by dependants	Eight annas for each dependant, subject to a maximum of rupees five.

*Bengal Government Notifications 3426-Com., dated 3rd July 1924, and 6807-Com., dated 1st October 1934.

V.	Applications for review—	
	(*a*) Where the review claimed is the continuance, increase, decrease or ending of half-monthly payments ..	Eight annas.
	(*b*) Where the half-monthly payments are sought to be converted into a lump sum ..	Two rupees.
	(*c*) In all other cases ..	One rupee.
VI.	Applications for the registration of agreements—	
	(*a*) Where the application or the memorandum of agreement is signed by both parties ..	Nil.
	(*b*) In all other cases ..	Eight annas.
VII.	Applications to summon witness—	
	(*a*) For the first witness mentioned in the application ..	Eight annas.
	(*b*) For every subsequent witness	Four annas.
VIII.	Applications for indemnification, .	Three rupees.
IX.	Applications for the recovery of compensation—	
	(*a*) Under an order already passed by the Commissioner ..	Eight annas.
	(*b*) In all other cases ..	The same fee as is payable on a similar application for compensation.
X.	All applications not otherwise provided for	Eight annas.

2. In the case of any application falling under head X of rule 1 the Commissioner may, if he thinks fit, permit the application to be made without fee.

3. If in any case the Commissioner considers that he ought to pass orders granting relief of a different kind or to a different extent from that claimed by the applicant, and if the fee which would have been payable by the applicant on an application for the relief which the Commissioner considers to be due is greater than the fee which has actually been paid, the Commissioner may require the applicant to deposit fees to the extent of the difference.

CHAPTER II.

Costs.

1. Where the Commissioner directs that any costs shall not follow the event, he shall state his reasons in writing.

2. The costs which may be awarded shall include—

(*a*) the charges necessarily incurred on account of court-fees,

(*b*) the charges necessarily incurred on subsistence money to witnesses, and

(*c*) pleaders' fees on the scale prescribed in the following rule :—

3. In any proceeding involving an application for compensation in the form of a lump sum, an application for commutation or an application for indemnificaton, the fee allowed shall be Rs. 10. subject by special order of the Commissioner to diminution to a sum not less than Rs. 5 and to increase to a sum not more than Rs. 50, for each such proceeding. In all other applications the fee allowed shall be Rs. 5, subject to increase by special order to a sum not exceeding Rs. 20.

4. When a party engages more pleaders than one to conduct or defend a case, he shall be allowed one set of costs only.

5. When several defendants having substantially one defence to make employ several pleaders, they shall be allowed one set of costs only. In such cases it will be for the applicant, at the time of hearing, to ask for a direction of the Court that separate costs be not allowed.

6. When two or more defendants having separate substantial defences have engaged the services of one pleader, they shall be allowed separate sets of costs. In this case it will be for the defendants interested to apply at the hearing for separate costs.

7. When several defendants having separate defences are represented by separate pleaders, they shall be entitled to separate costs.

CHAPTER III.

Statements regarding fatal accidents.

1. The notice to be sent to a workman's employer by a Commissioner under sub-section (1) of section 10A of the Act shall be in Form I and shall be accompanied by a copy of Form II.

2. The statement to be submitted by an employer under section 10A shall be in Form II.

FORM I.

To

Whereas I have received information that*————————, a workman employed by you in†————————has died as the result of an accident arising out of and in the course of employment, I hereby require you in accordance with section 10A of the Workmen's Compensation Act, 1923, to submit to me within thirty days of the receipt of this notice the enclosed form with the particulars required in paragraphs 1 and 2 and the particulars required in *either* paragraph 3 *or* paragraph 4 duly filled in. In the event of your admitting liability to pay compensation, the necessary deposit must, under section 10A(2) of the Act, be made within thirty days of the receipt of this notice.

Commissioner
for Workmen's Compensation.

Date————————

FORM II.

1. In reply to your notice, dated the————————19————which was received by me on the————————19————it is submitted that*————————residing at (if available, home address)————————a workman over/under 15 years of age employed in†————————met with an accident on the————————19————as a result of which he died on the————————19————. The monthly wages of the deceased amounted to Rs.————————.

2. The circumstances in which the deceased met his death were as follows————————

---

‡3. I admit liability to pay as compensation, on account of the deceased's death, the amount of Rs.————which was/will be deposited by (my agent)————————with you on/before the————————19——.

‡4. I disclaim liability to pay compensation on account of the deceased's death on the following grounds:————————

————————*Employer.*

*Insert name of workman.
†Insert name of establishment.
‡One of these paragraphs to be struck out.

CHAPTER IV.

Notice books under section 10(3).

1. A notice book shall be maintained of notices under sub-section (3) of section 10 by the following classes of employers—

(*a*) Any person who has control over any premises which is a factory as defined in sub-section (3) of section 2 of the Indian Factories Act, 1911.

(*b*) The owner, agent or manager of any mine as defined in clause (*f*) of section 3 of the Indian Mines Act, 1923.

2. The notice book to be maintained under rule 1 shall be in the following form—

Notice books of accidents.

(To be filled up by or on behalf of workman.)

Date and time of accident ——————————

Date and time of notice ——————————

Name of person injured ——————————

Address ——————————

Cause of injury——————————

Signature or thumb-impression of person giving notice.

(To be filled up by the employer or his agent.)

Occupation of person injured ——————————

Rate of wages ——————————

Place of accident ——————————

Nature of injuries ——————————

Names of eye-witnesses ——————————

Note of circumstances ——————————

——————————

BIHAR AND ORISSA RULES*

CHAPTER I.

Fees.

1. The following fees shall be payable in respect of proceedings under the Act :—

I.	Applications for compensation :—	
	(*a*) where compensation is claimed in the form of recurring payments	eight annas.
	(*b*) where compensation is claimed in the form of a lump sum	one rupee where the sum does not exceed Rs. 500 *plus* one rupee for each additional sum of Rs. 500 or fraction thereof.
II.	Applications for commutation :—	
	(*a*) by agreement between the parties	eight annas.
	(*b*) in all other cases	two rupees.
III.	Applications for the deposit of compensation :—	
	(*a*) under section 8 (1) of the Act	nil
	(*b*) under section 8 (2) of the Act (in respect of each person to whom compensation is payable) ..	eight annas.
IV.	Applications for distribution by dependants for each dependant	one rupee.

* Chapters I and II were promulgated in Revenue Department Notification No. 2314-XI-4-24 of the 24th July 1924, Chapter II in Notification No. 699-XI-2 Com. of 5th March 1934 and Chapter IV in Notification No. 164-XI-18-Com.-R. of 16th July 1935.

V.	Applications for review :—	
	(*a*) where the review claimed is the continuance, increase, decrease or ending of half-monthly payments	eight annas.
	(*b*) where the half-monthly payments are sought to be converted into a lump sum	two rupees.
	(*c*) in all other cases	one rupee.
VI.	Applications for the registration of agreements :—	
	(*a*) where the application or the memorandum of agreement is signed by both parties	nil.
	(*b*) in all other cases	eight annas.
VII.	Applications to summon witness :—	
	(*a*) for the first witness mentioned in the application	eight annas.
	(*b*) for every subsequent witness	four annas.
VIII.	Applications for indemnification	three rupees.
IX.	Applications for the recovery of compensation :—	
	(*a*) under an order already passed by the Commissioner	eight annas.
	(*b*) in all other cases	the same fee as is payable on a similar application for compensation.
X.	All applications not otherwise provided for	eight annas.

2. In the case of any application falling under head X the Commissioner may, if he thinks fit, permit the application to be made without fee.

3. If in any case the Commissioner considers that he ought to pass orders granting relief of a different kind or to a different extent from that claimed by the applicant, and if the fee which would have been payable by the applicant on an application for the relief which the Commissioner considers to be due is greater than the fee which has actually been paid, the Commissioner may require the applicant to deposit fees to the extent of the difference.

CHAPTER II.

Costs.

4. Where the Commissioner directs that any costs shall not follow the event, he shall state his reasons in writing.

5. The costs which may be awarded shall include—

(*a*) the charges necessarily incurred on account of court-fees,

(*b*) the charges necessarily incurred on subsistence money to witnesses, and

(*c*) pleader's fees on the scale prescribed in the following rule :—

6. In any proceeding involving an application for compensation in the form of a lump sum, an application for commutation or an application for indemnification, the fee allowed shall be Rs. 10 subject by special order of the Commissioner to diminution to a sum not less than Rs. 5 and to increase to a sum not more than Rs. 50, for each such proceeding. In all other applications the fee allowed shall be Rs. 5, subject to increase by special order to a sum not exceeding Rs. 20.

7. When a party engages more pleaders than one to conduct or defend a case, he shall be allowed one set of costs only.

8. When several defendants having substantially one defence to make employ several pleaders, they shall be allowed one set of costs only. In such cases it will be for the applicant, at the time of hearing, to ask for a direction of the Court that separate costs be not allowed.

9. When two or more defendants having separate substantial defences have engaged the services of one pleader, they shall be allowed separate sets of costs. In this case it will be for the defendants interested to apply at the hearing for separate costs.

10. When several defendants having separate defences are represented by separate pleaders, they shall be entitled to separate costs.

CHAPTER III.

Statements regarding fatal accidents.

11. (1) The notice to be sent to a workman's employer by a Commissioner under sub-section(1) of section 10-A of the Act shall be in Form I and shall be accompanied by a copy of Form II.

(2) The statement to be submitted by an employer under section 10-A shall be in Form II.

FORM I.

Whereas I have received information that (1)..... a workman employed by you in (2)..... ....has died as the result of an accident arising out of and in the course of employment, I hereby require you in accordance with section 10-A of the Workmen's Compensation Act, 1923, to submit to me within 30 days of the receipt of this notice the enclosed form with the particulars required in paragraphs 1 and 2 and the particulars required in *either* paragraph 3 *or* paragraph 4 duly filled in. In the event of your admitting liability to pay compensation, the necessary deposit must, under section 10-A (2) of the Act, be made within 30 days of the receipt of this notice.

.....Commissioner for

Workmen's Compensation.

(1) Insert name of workman. (2) Insert name of establishment.

FORM II.

1. In reply to your notice dated the.....19.. which was received by me on the.....19.... it is submitted that (1)..... .... residing at.....workman $\frac{\text{over}}{\text{under}}$ 15 years of age employed in (2)..... .....met with an accident on the..... .....19....as a result of which he died on the.....19..... The monthly wages of the deceased amounted to Rs.....

2. The circumstances in which the deceased met his death were as follows..... . ...

3. I admit liability to pay as compensation, on account of the deceased's death, the amount of Rs.....which $\frac{\text{was}}{\text{will be}}$ deposited with you $\frac{\text{on}}{\text{upon}}$ the.....19. ....

4. I disclaim liability to pay compensation on account of the deceased's death on the following grounds :—..... . . ..

} One of these paragraphs to be struck out.

.....Employer.

(1) Insert name of workman. (2) Insert name of establishment.

CHAPTER IV.

Notice books under section 10 (3).

12. (1) A notice book shall be maintained under sub-section (3) of section 10 of the Act by employers who—

(*a*) employ more than 460 workmen in iron and steel smelting and rolling mills;

(*b*) employ more than 1,300 workmen in copper smelting and refining factories;

(*c*) employ more than 120 workmen in railway workshops;

(*d*) employ more than 160 workmen in sugar factories using vacuum pans;

(*e*) employ more than 300 workmen in engineering works (including works in which metal products are manufactured);

(*f*) employ workmen in any mine as defined in clause (*f*) of section 3 of the Indian Mines Act, 1923.

(2) The notice book required to be maintained by sub-rule 1 shall be in the following form :—

FORM III.

Notice book of accidents.

(To be filled up by or on behalf of workman.)

Date and time of accident ——————————

Date and time of notice ——————————

Name of person injured ——————————

Address ——————————

Cause of injury ——————————

Signature or thumb-impression of person giving notice.

(To be filled up by the employer or his agent.)

Rate of wages ——————————

Place of accident ——————————

Nature of injuries ——————————

Names of eye-witnesses ——————————

Note of circumstances ——————————

BOMBAY RULES*

PART I.

PRELIMINARY.

1. *Short title.*—These rules may be called the Bombay Workmen's Compensation Rules, 1934.

2. *Definitions.*—In these rules, unless there is anything repugnant in the subject or context,—

(*a*) "The Act" means the Workmen's Compensation Act, 1923.

(*b*) "Form" means a form appended to these rules.

(*c*) "Section" means a section of the Act.

PART II.

SCALES OF COSTS AND THE FEES PAYABLE IN RESPECT OF PROCEEDINGS BEFORE A COMMISSIONER.

3. *Costs.*—(1) Where the Commissioner directs that any costs shall not follow the event, he shall state his reasons in writing.

(2) The costs which may be awarded shall include—

(*a*) the charges necessarily incurred on account of court fees;

(*b*) the charges necessarily incurred on subsistence money to witnesses; and

(*c*) pleader's fees on the scale prescribed in the following rule.

(3) In any proceeding involving an application for compensation in the form of a lump sum, an application for commutation or an application for indemnification, the fee allowed shall be Rs. 10 subject by special order of the Commissioner to diminution to a sum not less than Rs. 5 and to increase to a sum not more than Rs. 50 for each such proceeding. In all other applications, the fee allowed shall be Rs. 5 subject to increase by special order to a sum not exceeding Rs. 20.

(4) When a party engages more pleaders than one to conduct or defend a case, he shall be allowed one set of costs only.

---

* Bombay Government Notification No. 9920, dated 19th September 1934.

(5) When several defendants having substantially one defence to make employ several pleaders, they shall be allowed one set of costs only. In such cases, it will be for the applicant, at the time of hearing, to ask for a direction of the Court that separate costs be not allowed.

(6) When two or more defendants having separate substantial defences have engaged the services of one pleader, they shall be allowed separate sets of costs. In this case, it will be for the defendants interested to apply at the hearing for separate costs.

(7) When several defendants having separate defences are represented by separate pleaders, they shall be entitled to separate costs.

4. *Fees.*—The fees specified in column 3 of the subjoined schedule shall be payable in respect of the proceedings mentioned in the second column of the said schedule :—

Schedule.

No.	Description of proceedings.	Amount of Fees.
I.	Applications for compensation—	
	(*a*) Where compensation is claimed in the form of recurring payments ..	Eight annas.
	(*b*) Where compensation is claimed in the form of a lump sum	One rupee where the sum does not exceed Rs. 500 *plus* one rupee for each additional sum of Rs. 500 or fraction thereof.
II.	Applications for commutation—	
	(*a*) By agreement between the parties	Eight annas.
	(*b*) In all other cases ..	Two rupees.
III.	Applications for the deposit of compensation—	
	(*a*) Under section 8 (*1*) of the Act ..	Nil.
	(*b*) Under section 8 (*2*) of the Act (in respect of each person to whom compensation is payable) ..	Eight annas.

IV.	Applications for distribution by dependants, for each dependant	One rupee.
V.	Applications for review—	
	(*a*) Where the review claimed is the continuance, increase, decrease or ending of half-monthly payments ..	Eight annas.
	(*b*) Where the half-monthly payments are sought to be converted into a lump sum ..	Two rupees.
	(*c*) In all other cases ..	One rupee.
VI.	Applications for the registration of agreements—	
	(*a*) Where the application or the memorandum of agreement is signed by both parties	Nil.
	(*b*) In all other cases ..	Eight annas.
VII.	Applications to summon witnesses—	
	(*a*) For the first witness mentioned in the application ..	Eight annas.
	(*b*) For every subsequent witness	Four annas.
VIII.	Applications for indemnification ..	Three rupees.
IX.	Applications for the recovery of compensation—	
	(*a*) Under an order already passed by the Commissioner ..	Eight annas.
	(*b*) In all other cases ..	The same fee as payable on a similar application for compensation.
X.	All applications not otherwise provided for ..	Eight annas.

N. B.—In the case of any application falling under the head X the Commissioner may, if he thinks fit, permit the application to be made without fee.

5. *Applicant may be required to deposit excess fees.*—If in any case the Commissioner considers that he ought to pass orders granting relief of a different kind or to a different extent from that claimed by the applicant, and if the fee which would have been payable by the applicant on an application for the relief which the Commissioner considers to be due is greater than the fee which has actually been paid, the Commissioner may require the applicant to deposit fees to the extent of the difference.

PART III.

Maintenance of Registers, Language of the Court Records, Certified Copies and Allowances to Witnesses

6. *Register of applications.*—All applications presented to the Commissioner shall be registered in a register in Form A.

7. *Register of fatal accidents.*—Every Commissioner shall maintain a separate register in Form B of fatal accidents which come to his knowledge either on account of deposits made by or on behalf of employers, or because of applications made by dependants of a deceased workman for an order for deposit and payment of compensation.

8. *Register of non-fatal accidents.*—Every Commissioner shall maintain a separate register in Form C of non-fatal accidents which come to his knowledge in any of the following ways :—

(1) On account of applications for registration of memoranda of agreements.

(2) On account of applications for commutation of half-monthly payments.

(3) On account of amount of compensation deposited with the Commissioner under section 8 (*2*).

(4) On account of applications for settlement of claim made by the injured workman.

9. *Language of the record.*—The record of the Commissioner shall be kept in the English language.

10. *Supply of certified copies to parties.*—Certified copies of any papers in any proceedings before a Commissioner should be supplied to parties in accordance with the rules in Chapter XIII (in so far as they are consistent with the Act) of the Manual of Circulars issued by the High Court of Bombay for the guidance of Civil Courts.

11. *Allowances to witnesses.*—In cases where a Commissioner has to issue summons to a witness either at the instance of a party to a proceeding before him, or on his own initiative, the allowance to be paid to the witness shall be on the same scale as obtains in the Court of Small Causes.

PART IV.

12. *Fees to assessors.*—Where in pursuance of the provisions of sub-section (2) of section 20 any person possessing special knowledge of any matter relevant to the case under inquiry is

chosen by the Commissioner to assist him in holding the same, he shall be entitled to such fee as the Commissioner may fix, subject to a maximum of rupees fifty and a minimum of rupees twenty.

Provided that he shall be entitled to an additional fee of rupees ten :

(*a*) for each extra case if he is required to sit in more than one case on the same day ; and

(*b*) for each of the second and third days of any one case.

PART V.

NOTICE UNDER SECTION 10-A AND THE STATEMENT BY THE EMPLOYER IN REPLY THERETO.

13. The notice sent by a Commissioner under sub-section (1) of section 10 A shall be in Form D and shall be accompanied by a copy of Form E.

14. The statement submitted by an employer under section 10 A shall be in Form E.

FORM A.

(*See* rule 6).

Register of Applications for the year 19 .

Date of presentation of the application.	Serial No.	For Distribution	Nature of the application.								Name and address of the applicant.	Name and address of the opposite party.	Claim.	Order.			Appeal.	Remarks.
			For deposit.	For Compensation.	For half monthly payments.	For commutation.	For Review.	For recovery.	Application for registration of agreement.	Miscellaneous.				Date.	For whom.	For what amount.		
		A	B	C	D	E	F	G	H	I								

FORM B.

(*See* rule 7.)

Register of fatal accidents for the year 19 .

Serial No.	Date of information.	Date of accident.	Name of the deceased workman.	Name of the Employer.	Dependants of the deceased workman.	Nature of accident and injury.	Amount of compensation and rate of monthly wages.	Date of distribution among the dependants.	Remarks.

FORM C

(*See* rule 8)

Register of non-fatal accidents for the year 19 .

Serial No.	Date of information.	Date of accident.	Name of the workman injured.	Name of the employer.	Nature of injury.		Amount of compensation and monthly wages.		Date of disposal.	Remarks.
					Permanent.	Temporary.	Lump sum.	Half monthly.		

FORM D.

(*See* rule 13.)

Whereas I have received information that (1) , a workman employed by you in (2) has died as the result of an accident arising out of and in the course of his employment, I hereby require you in accordance with section 10 A of the Workmen's Compensation Act, 1923, to submit to me within thirty days of the receipt of this notice the enclosed Form with the particulars required in paragraphs 1, 2 and 3 and the particulars required in either paragraph 4 *or* 5 duly filled in. In the event of your admitting liability to pay compensation, the necessary deposit must, under section 10 A (*2*) of the said Act, be made within thirty days of the receipt of this notice.

Commissioner for Workmen's Compensation.

Dated 193 .

(1) Insert name of workman. (2) Insert name of establishment.

FORM E.

(*See* rule 14.)

1. In reply to your notice dated the 19 which was received by me on the 19 , it is submitted that (1) , residing at , a workman $\frac{\text{over}}{\text{under}}$ 15 years of age employed in (2) met with an accident on the 19 as a result of which he died on the 19 .

The monthly wages of the deceased amounted to Rs. .

2. The circumstances in which the deceased met his death were as follows :—

3. The deceased left the following dependants (3)

*4. I admit liability to pay as compensation, on account of the deceased's death, the amount of Rs. which $\frac{\text{was}}{\text{will be}}$ deposited with you $\frac{\text{on}}{\text{before}}$ the 19 .

*5. I disclaim liability to pay compensation on account of the deceased's death on the following grounds :—

Employer.

(1) Insert name of workman.
(2) Insert name of establishment.
(3) Insert names and addresses where known.
*One of these paragraphs to be struck out.

CENTRAL PROVINCES RULES

*Costs.**

1. Where the Commissioner directs that any costs shall not follow the event, he shall state his reasons in writing.

2. The costs which may be awarded shall include—

(*a*) the charges necessarily incurred on account of court-fees;

(*b*) the charges necessarily incurred on subsistence money to witnesses; and

(*c*) pleaders' fees on the scale prescribed in the following rule.

3. In any proceeding involving an application for compensation in the form of a lump sum, an application for commutation or an application for indemnification, the fee allowed shall be Rs. 10, subject by special order of the Commissioner to diminution to a sum not less than Rs. 5 and to increase to a sum not more than Rs. 50 for each such proceeding. In all other applications the fee allowed shall be Rs. 5, subject to increase by special order to a sum not exceeding Rs. 20.

4. When a party engages more pleaders than one to conduct or defend a case, he shall be allowed one set of costs only.

5. When several defendants having substantially one defence to make employ several pleaders, they shall be allowed one set of costs only. In such cases it will be for the applicant, at the time of hearing, to ask for a direction of the court that separate costs be not allowed.

6. When two or more defendants having separate substantial defences have engaged the services of one pleader, they shall be allowed separate sets of cost. In this case it will be for the defendants interested to apply at the hearing for separate costs.

7. When several defendants having separate defences are represented by separate pleaders, they shall be entitled to separate costs.

---

*The rules relating to costs and fees were promulgated in Commerce and Industry Department. Notification No. 1736—1251—XIII, dated the 6th August 1924.

Fees.

8. The following fees shall be payable by means of court-fee stamps in respect of proceedings under the Act :—

I.—Applications for compensation—	
(*a*) Where compensation is claimed in the form of recurring payments	Eight annas.
(*b*) Where compensation is claimed in the form of a lump sum	One rupee where the sum does not exceed Rs. 500 *plus* one rupee for each additional sum of Rs. 500 or fraction thereof.
II.—Applications for commutation—	
(*a*) By agreement between the parties	Eight annas.
(*b*) In all other cases ..	Two rupees.
III.—Applications for the deposit of compensation—	
(*a*) Under section (8) (1) of the Act	*Nil.*
(*b*) Under section (8) (2) of the Act (in respect of each person to whom compensation is payable) ..	Eight annas.
IV.—Applications for distribution by dependants for each dependant	One rupee.
V.—Applications for review—	
(*a*) Where the review claimed is the continuance, increase, decrease or ending of half-monthly payments ..	Eight annas.
(*b*) Where the half-monthly payments are sought to be converted into a lump sum	Two rupees.
(*c*) In all other cases ..	One rupee.
VI.—Applications for the registration of agreements—	
(*a*) Where the application or the memorandum or agreement is signed by both parties .	*Nil.*
(*b*) In all other cases ..	Eight annas.

VII.—Applications to summon witnesses—	
(*a*) For the first witness mentioned in the application ..	Eight annas.
(*b*) For every subsequent witness	Four annas.
VIII.—Applications for indemnification	Three rupees.
IX.—Applications for the recovery of compensation–	
(*a*) Under an order already passed by the Commissioner	Eight annas.
(*b*) In all other cases ..	The same fee as is payable on a similar application for compensation.
X.—All applications not otherwise provided for	Eight annas.

9. Diet money shall be paid to witnesses on the same scale as is in force at the time in the Criminal Courts of the province.

10. In the case of any application falling under head X, the Commissioner may, if he thinks fit, permit the application to be made without fee.

11. If in any case the Commissioner considers that he ought to pass orders granting relief of a different kind or to a different extent from that claimed by the applicant, and if the fee which would have been payable by the applicant on an application for the relief which the Commissioner considers to be due is greater than the fee which has actually been paid, the Commissioner may require the applicant to deposit fees to the extent of the difference.

Registers and Records.

[Rules for the maintenance of register and records of proceedings by Commissioners were promulgated in Notification No. 248-96-XIII, dated the 2nd February 1925. These are not reproduced here.]

*Statements regarding fatal accidents.**

(1) The notice sent by a Commissioner under sub-section (1) of section 10-A of the Act shall be in Form X and shall be accompanied by a copy of Form Y.

(2) The statement submitted by an employer, under section 10-A shall be in Form Y.

*Notification No. 853-814-XIII of 1st May 1934.

FORM X.

NOTICE.

To

The (Employer)———— ————————————————

at————————————————

Whereas I have received information that *————————, a workman employed by you in†————————————, has died as the result of an accident arising out of and in the course of employment, I hereby require you, in accordance with section 10-A of the Workmen's Compensation Act, 1923, to submit to me within thirty days of the receipt of this notice the enclosed form with the particulars required in paragraphs 1 and 2 and the particulars required in either paragraph 3 or paragraph 4 duly filled in. In the event of your admitting liability to pay compensation, the necessary deposit must, under section 10-A (2) of the Act, be made within thirty days of the receipt of this notice.

.....*Commissioner for Workmen's Compensation.*

* Insert name of workman. †Insert name of establishment.

FORM Y.

STATEMENT UNDER SECTION 10-A OF THE WORKMEN'S COMPENSATION ACT, 1923.

To

The Commissioner of Workmen's Compensation,

at————————————————.

1. In reply to your notice dated the————————193 , which was received by me on the————————193 , it is submitted that*————————————, residing at————————————————, a workman $\frac{\text{over}}{\text{under}}$ 15 years of age, employed in†———————— met with an accident on the————————————193 , as a result of which he died on the————————————193 . The monthly wages of the deceased amounted to Rs.————, 2. The circumstances in which the deceased met his death were as follows:———————————————— ————

†3. I admit liability to pay as compensation, on account of the deceased's death, the amount of Rs.————which $\frac{\text{was}}{\text{will be}}$ deposited with you $\frac{\text{on}}{\text{before}}$ the————————193 .

‡4. I disclaim liability to pay compensation on account of the deceased's death on the following grounds:————

————————————————

————————————————

————————*Employer.*

*Insert name of workman. †Insert name of establishment.

‡One of these paragraphs to be struck out.

*Notice Books.**

Section 33 (*d*).

1. *Maintenance of notice books.*—Every employer of workmen employed in—

(*a*) a perennial factory falling within the meaning of clause (*a*) of sub-section (3) of section 2 of the Indian Factories Act, 1911 (XII of 1911), or

(*b*) a mine, as defined in clause (*f*) of section 3 of the Indian Mines Act, 1923 (IV of 1923), or

(*c*) a railway, as defined in clause (4) of section 3 and sub-section (1) of section 148 of the Indian Railways Act, 1890, or

(*d*) electric works, as defined in clause (*n*) of section 2 of the Indian Electricity Act, 1910,

shall maintain a notice book in the form appended, in accordance with the provisions of sub-section (3) of section 10 of the Act.

Form of Notice Book required to be maintained under section 10 (3) *of the Workmen's Compensation Act,* 1923.

Date of accident and time if known.	Name of person injured.	Address of person injured.	Cause of injury.	Date and time of notice.	Thumb impression or signature of person giving notice.

Section 33 (*f*).

2. *Reports of fatal accidents.*—In all cases in which by any law for the time being in force, notice of a fatal accident is required to be given to any authority by or on behalf of an employer, the report under section 10-B (1) of the Act, shall, under the proviso to that section, be made to the said authority.

NOTE.—If the notice in question gives the particulars required by the report, employers may comply with the requirements of section 10 B by sending the notice in duplicate.

*Notification No. 1588-869-XIII, dated the 4th August 1934.

BERAR RULES

These are the same as the Central Provinces rules; the corresponding notifications are:—

Costs and Fees.—1737-1251-XII, dated the 6th August 1924.

Registers and Records—249-96-XIII, dated the 2nd February 1925.

Statements regarding Fatal Accidents.—854-314-XIII, dated the 1st May 1934.

Notice Books.—1588-869-XIII, dated the 4th August 1934.

MADRAS RULES.*

Costs.

1. Where the Commissioner directs that any costs shall not follow the event, he shall state his reasons in writing.

2. The costs which may be awarded shall include—

(*a*) the charges necessarily incurred on account of court-fees;

(*b*) the charges necessarily incurred on subsistence money to witnesses; and

(*c*) pleader's fees on the scale prescribed in the following rule.

3. (*a*) In any proceeding involving an application for compensation in the form of a lump sum or for commutation or for indemnification, the pleader's fee allowable shall ordinarily be Rs. 10.

The Commissioner may, in any such proceeding for sufficient cause, reduce the fee to a sum not less than Rs. 5 or increase it to a sum of not exceeding Rs. 30.

(*b*) In all other applications the pleader's fee shall ordinarily be Rs. 5.

The Commissioner may, in any special case, increase the fee to a sum not exceeding Rs. 20.

4. When a party engages more pleaders than one to conduct or defend a case, he shall be allowed one set of costs only.

5. If several respondents having substantially one defence to make, succeed thereon, not more than one fee shall be allowed; and the court shall apportion it among the several respondents in such manner as it may think fit.

6. If several respondents have separate and distinct defences to make, they may, if successful, be allowed separate costs, whether they are represented by separate pleaders or not.

Fees.

7. The fees payable in respect of proceedings under the Act shall be as prescribed hereunder:—

I.	Application for compensation—	
	(*a*) where compensation is claimed in the form of recurring payments under class D of sub-section (i) of section 4 ..	Eight annas.

*Madras Government Notification under Orders No. 2083 (General), dated 18th July 1934 and No. 1411-L., dated 4th July 1934.

	(*b*) where compensation is claimed in the form of a lump sum under clauses A, B or C of sub-section (1) of section 4..	(*i*) where the sum claimed does not exceed Rs. 500 one rupee, and (*ii*) where the sum claimed exceeds Rs. 500 one rupee for each sum of Rs. 500 or fraction thereof.
II.	Application for commutation under section 7—	
	(*a*) where it is by agreement between the parties ..	Eight annas.
	(*b*) in any other case ..	One rupee.
III.	Application for the deposit of compensation—	
	when presented under section 8 (1)	Nil.
	when presented under section 8 (2) (in respect of each person to whom compensation is payable) ..	Eight annas.
IV.	Application for apportionment of compensation under section 8 (1)	One rupee for each dependant.
V.	Application for review—	
	(*a*) where the review claimed is the continuance, increase, decrease or ending of half-monthly payments under section 6 (2) ..	Eight annas.
	(*b*) where the half-monthly payments are sought to be converted into a lump sum under section 6 (2) ..	One rupee.
	(*c*) in all other cases ..	One rupee.

VI.	Application for the registration of agreements—	
	(*a*) where either the application or the memorandum of agreement accompanying it is signed by both the parties under section 28 (1) ..	Nil.
	(*b*) in any other case ..	Eight annas.
VII.	Application to summon witnesses—	
	(*a*) when the application is to summon a single witness ..	Eight annas.
	(*b*) when the application is to summon more than one witness ..	Eight annas for the first witness and four annas for every subsequent witness.
VIII.	Application for indemnification under section 13 ..	Three rupees.
IX.	Application for the recovery of compensation—	
	(*a*) under an order already passed by the Commissioner ..	Eight annas.
	(*b*) in all other cases ..	The same fee as is payable on a similar application for compensation.
X.	All applications not otherwise provided for ..	Eight annas.

8. In the case of any application falling under head X the Commissioner may, if he thinks fit, permit the application to be made without fee.

9. Where the Commissioner grants relief of a different kind from or to a greater extent than that claimed by the applicant and if the fee which would have been payable on an application for the relief which the Commissioner grants is greater than the fee which has actually been paid, the Commissioner shall require the applicant to deposit the difference. The order shall not be executed until the difference is paid.

10. All fees payable under these rules shall be collected in the manner prescribed by the Court Fees Act.

11. The following registers shall be maintained by the Commissioner :—

(1) A register in Form I of application for the settlement of any matter filed before the Commissioner ;

(2) A register in Form II of subpœna applications filed before the Commissioner ;

(3) A register in Form III of processes delivered for service on parties ;

(4) A register in Form IV of court-fees on all applications filed before the Commissioner ;

(5) A register in Form V of deposits received from and repayments made to parties ;

(6) A register in Form VI of miscellaneous applications filed before the Commissioner ; and

(7) A register in Form VII showing the receipt and disposal of applications for copies of records.

12. (1) All applications presented to the Commissioner shall be headed with a cause title as in Form VIII.

(2) All proceedings subsequent to an original application or petition may be headed with a short cause title as in Form IX.

13. The full name, residence and description of each party and if such is the case, the fact that any party proceeds or is proceeded against, in a representative character shall be set out at the beginning of the application or petition as in Form X and need not be repeated in the subsequent proceedings in the same application or petition.

14. Every application shall at the foot thereof contain a list to be signed by the applicant or his representative of the documents filed therewith in Form XI or a statement signed as aforesaid that no document is filed therewith.

15. All applications, written statements and other proceedings and documents may be presented to or filed in court by delivering the same personally to the Chief Ministerial Officer of the Court at any time during office hours or by sending them by registered post to that officer. The said officer shall at once endorse on the documents the date of presentation or receipt by registered post, and if proceedings are thereby instituted shall insert the serial number.

16. Without prejudice to anything contained in the Act or in the rules framed thereunder by the Government of India or in these rules, a party shall be at liberty to inspect and obtain a copy of any document recited or referred to in an application or written statement and filed in court therewith.

17. Every party and his representative desiring to inspect or to obtain copy of any proceedings filed in court by him or any other party or a Commissioner or Officer of Court or any other record relating to the application or matter to which he or his client is a party shall present a memorandum in Form XII specifying the proceedings or record of which inspection or copy is required.

18. An application for inspection or copies of records or documents of, or in the custody of, a court other than records or documents filed in an application or proceeding or matter to which the applicant is a party shall be made in Form XII and shall be supported by an affidavit stating whether the applicant has any, and if so, what interest in the subject-matter of the document or of the proceeding in which the record or document is filed, the purpose for which inspection or copy is required and if the same is required for the purpose of an intended or pending proceeding the nature of the said proceeding and the relevancy of the record or document to the case of the applicant.

The court may in its discretion grant or refuse leave to inspect or to obtain a copy of the record or document applied for after causing notice of the application to be given to the parties to the said proceedings if it thinks necessary.

19. When a person is entitled to inspect a proceeding or document the search therefor shall be made by the officer of the court and such person shall be allowed to read the proceedings or document which he is entitled to inspect or to have it read to him and to make a short memorandum of the date and nature thereof so as to enable him to describe it sufficiently in case a copy is required but except where otherwise expressly provided by these rules he shall not be entitled to take a copy of the proceeding or document or any part thereof or to make extracts therefrom.

20. All copies furnished by the court shall be certified to be true copies and shall be sealed with the seal of the court. The Chief Ministerial Officer of the Court shall initial every alteration and interlineation in the copy and shall sign a certificate at the foot thereof that the same is a true copy and shall also state the number of alterations and interlineations made therein.

21. Every copy shall bear an endorsement showing the following dates :—

(1) application made ;
(2) stamp papers or charges called for ;
(3) stamp papers or charges deposited ;

(4) copy ready ; and
(5) copy delivered or posted.

22. (1) One stamp paper of the value of three annas shall be brought in for every 175 words or fraction of 175 words.

(2) Four figures shall be taken as equivalent to one word and vernacular words with short suffixes and inflections shall be counted as one word.

(3) Cost of copying maps, plans, genealogical trees, tabular statements or other work requiring skilled labour shall be fixed by the Commissioner and deposited in court in cash :

Provided that the Commissioner may, in the case of poverty of the applicant, grant copies free of cost notwithstanding the provisions contained in sub-rules (1) and (3).

23. (1) On receipt of an application for copies of records or documents, notice shall be given by post to the applicant of the number of stamp papers required and the amount to be deposited in cash.

(2) If the required stamp papers or cash are not received within a fortnight from the date of notice, the application shall be struck off.

(3) The procedure above described shall also apply to calls for additional stamp papers or cash when the first supply has been found to be insufficient.

(4) The applicant may in his application for a certified copy apply that the same may be delivered to him in person or through the post at a specified address and the copies shall be delivered accordingly and if the applicant so requires by registered post. If any such copy is not claimed by the applicant within 12 months from the date on which it was ready, the copy shall be destroyed.

(5) If a document of which a copy or inspection is sought is not found on record, the applicant shall be entitled to a certificate to that effect.

(6) If any party or representative wishes to inspect an original record or document with a view to ascertain its probable age or to discover erasures or interpolations therein, he shall do so in open court at the hearing of the application.

24. (1) The notice sent by the Commissioner under sub-section (1) of section 10-A shall be in Form XIII and shall be accompanied by a copy of Form XIV.

(2) The statement submitted by an employer under section 10-A shall be in Form XIV.

Notice Books.

25. Notice books in Form XV shall be maintained in all establishments specified below wherein 1,000 workmen or more are employed :—

(*a*) Textile mills.
(*b*) Jute mills.
(*c*) Railway workshops.
(*d*) Distilleries.

[Forms I to VII are forms of registers maintained by Commissioners under rule 11 and are not reproduced here.]

FORM VIII.

CAUSE TITLE.

In the Court of the Commissioner for Workmen's Compensation

Application No. of 192 .

Between

1. T. Ramaswami Chetti and 2. T. Sivaswami Chetti..*Applicants*,

and

1. M. Munuswami Pillai and 2. M. Ramaswami Pillai..*Opposite parties.*

FORM IX.

SHORT CAUSE TITLE.

In the Court of the Commissioner for Workmen's Compensation.

Application No. of 192 .

Between

1. T. Ramaswami Chetti and five others ..*Applicants*

and

1. M. Munuswami Pillai and four others ..*Opposite parties.*

FORM X.

CAUSE TITLE.

Application.

The abovenamed applicants state as follows :—

(1) Tanjore Ramaswami Chetti, the first applicant, is a workman and resides at————

(2) ————————————————————————————————

The address of the applicants for service of all notices and process is————————————

2. Madura Munuswami Pillai, the first named opposite party, is the employer of————————and resides at———

3. (Set out the facts showing the cause of action, in consecutive numbered paragraphs.)

4. The applicants estimate the value of the relief sought by them at the sum of Rs.

5. The applicants pray that————————

(*a*) (Set out reliefs claimed in successive paragraphs).

(Sd.) T. RAMASWAMI CHETTI.

FORM XI.

LIST OF DOCUMENTS UNDER RULE————————

(*Cause title.*)

Serial number	Date, if any, of document in vernacular and in English.	Parties to the document.	Description of document.

(Signed)

Applicant or (opposite party) or pleader or representative of the applicant or opposite party.

FORM XII.

FORM OF APPLICATION FOR SEARCH OF RECORDS.

To

The Commissioner for Workmen's Compensation, Madras.

The undersigned hereby applies for inspection.

Name and address of applicant in full.	Description of record as far as possible.	Whether copy or inspection is required.	Purpose for which inspection or copy is required.	Order of Court, if any, under which application is made.

Date *Signature of applicant.*

FORM XIII.

Whereas I have received information that *
a workman employed by you in †
has died as the result of an accident arising out of and in the course of his employment, I hereby require you in accordance with section 10-A of the Workmen's Compensation Act, 1923, to submit to me within thirty days of the receipt of this notice a statement in the enclosed form with the particulars required in paragraphs 1 and 2 and the particulars required either in paragraph 3 or in paragraph 4, duly filled in. In the event of your admitting liability to pay compensation, the necessary deposit must, under section 10-A (2) of the Act, be made within thirty days of the receipt of this notice.

Commissioner for Workmen's Compensation.

FORM XIV.

1. In reply to your notice, dated the 19 , which was received by me on the 19 it is submitted that* residing at a workman $\frac{\text{over}}{\text{under}}$ 15 years of age employed in † met with an accident on the 19 , as a result of which he died on the 19 . The monthly wages of the deceased amounted to Rs.

2. The circumstances in which the deceased met his death were as follows :—

One of these paragraphs to be struck out.

3. I admit liability to pay as compensation, on account of the deceased's death, the amount of Rs. which $\frac{\text{was}}{\text{will be}}$ deposited with you $\frac{\text{on}}{\text{before}}$ the 19 .

4. I disclaim liability to pay compensation on account of the deceased's death on the following grounds :—

5. The names and addresses of the dependants of the deceased so far as known to me are—

Employer.

*Insert name of workman. †Insert name of establishment.

FORM XV.

[Form of Notice Book required to be maintained under section 10 (3) of the Workmen's Compensation Act, 1923].

Date of accident and time if known.	Name of workman injured.	Address of workman injured.	Cause of injury.	Date and time of notice.	Thumb impression or signature of person giving notice.
(1)	(2)	(3)	(4)	(5)	(6)

PUNJAB RULES

*Costs.**

1. Where the Commissioner directs that any costs shall not follow the event, he shall state his reasons in writing.

2. The costs which may be awarded shall include—

(*a*) the charges necessarily incurred on account of court-fees;

(*b*) the charges necessarily incurred on subsistence money to witnesses; and

(*c*) pleader's fees on the scale prescribed in the following rule.

3. In any proceeding involving an application for compensation in the form of a lump sum, an application for commutation or an application for indemnification, the fee allowed shall be Rs. 10, subject by special order of the Commissioner to diminution to a sum not less than Rs. 5 and to increase to a sum not more than Rs. 50 for each such proceeding. In all other applications the fee allowed shall be Rs. 5, subject to increase by special order to a sum not exceeding Rs. 20.

4. When a party engages more pleaders than one to conduct or defend a case, he shall be allowed one set of costs only.

5. When several defendants having substantially one defence to make employ several pleaders, they shall be allowed one set of costs only. In such cases it will be for the applicant at the time of hearing, to ask for a direction of the court that separate costs be not allowed.

6. When two or more defendants having separate substantial defences have engaged the services of one pleader, they shall be allowed separate sets of costs. In this case it will be for the defendants interested to apply at the hearing for separate costs.

7. When several defendants having separate defences are represented by separate pleaders, they shall be entitled to separate costs.

---

*Notification of Revenue Department No. 905-44-9041 of 9th July 1924.

1. The following fees shall be payable in respect of proceedings under the Act :—

I. Applications for compensation—	
(*a*) Where compensation is claimed in the form of recurring payments ..	Eight annas.
(*b*) When compensation is claimed in the form of a lump sum ..	One rupee where the sum does not exceed Rs. 500 *plus* one rupee for each additional sum of Rs. 500 or fraction thereof.
II. Applications for commutation—	
(*a*) By agreement between the parties ..	Eight annas.
(*b*) In all other cases ..	Two rupees.
III. Applications for the deposit of compensation—	
(*a*) Under section 8 (1) of the Act	Nil.
(*b*) Under section 8 (2) of the Act (in respect of each person to whom compensation is payable) ..	Eight annas.
IV. Applications for distribution by dependants for each dependant	One rupee.
V. Applications for review :—	
(*a*) Where the review claimed is the continuance, increase, decrease or ending of half-monthly payments ..	Eight annas.
(*b*) Where the half-monthly payments are sought to be converted into a lump sum ..	Two rupees.
(*c*) In all other cases ..	One rupee.
VI. Applications for the registration of agreements—	
(*a*) Where the application or the memorandum of agreement is signed by both parties ..	Nil.
(*b*) In all other cases ..	Eight annas.

Notification of Revenue Department No. 905-44-9042 of 9th July 1924.

VII. Applications to summon witness—	
(*a*) For the first witness mentioned in the application ..	Eight annas.
(*b*) For every subsequent witness	Four annas.
VIII. Aplications for indemnification	Three rupees.
IX. Applications for the recovery of compensation—	
(*a*) Under an order already passed by the Commissioner ..	Eight annas.
(*b*) In all other cases ..	The same fee as is payable on a similar application for compensation.
X. All applications not otherwise provided for ..	Eight annas.

2. In the case of any application falling under head X the Commissioner may, if he thinks fit, permit the application to be made without fee.

3. If in any case the Commissioner considers that he ought to pass orders granting relief of a different kind or to a different extent from that claimed by the applicant, and if the fee which would have been payable by the applicant on an application for the relief which the Commissioner considers to be due is greater than the fee which has actually been paid, the Commissioner may require the applicant to deposit fees to the extent of the difference.

Statements regarding fatal accidents.

The statement to be submitted by an employer under section 10-A shall be in the form below :—

1. In reply to your notice, dated the 19 , which was received by me on the 19 it is submitted that (1)
residing at
a workman over / under 15 years of age employed in (2)
met with an accident on the 19 , as a result of which he died on the 19 .
The monthly wages of the deceased amounted to Rs. .

2. The circumstances in which the deceased met his death were as follows :—

---

3. I admit liability to pay as compensation, on account of the deceased's death, the amount of Rs.——————which was on ——————deposited with you——————the——————19 . will be before

4. I disclaim liability to pay compensation on account of the deceased's death on the following grounds :

——————*Employer.*

(1) Insert name of workman. (2) Insert name of establishment.

Reports of Fatal Accidents.

By notification No. 8046 I. & L. of 8th March, 1935, the Government of the Punjab have directed that the provisions of section 10-B (1) of the Act shall apply to premises covered by items (*viii*), (*x*), (*xi*), (*xvii*), (*xviii*), (*xxi*), (*xxii*) and (*xxiii*) of Schedule II, and that the employer shall be responsible for submitting the report to the Commissioner.

UNITED PROVINCES RULES

*Costs and Fees**

Scale of Costs

(1) Where the Commissioner directs that any costs shall not follow the event, he shall state his reasons in writing.

(2) The costs which may be awarded shall include—

(*a*) the charges necessarily incurred on account of court-fees;

(*b*) the charges necessarily incurred on subsistence money to witnesses; and

(*c*) pleader's fees on the scale prescribed in the following rule.

(3) In any proceeding involving an application for compensation in the form of a lump sum, an application for commutation or an application for indemnification, the fee allowed shall be Rs. 10 subject by special order of the Commissioner to diminution to a sum not less than Rs. 5, and to increase to a sum not more than Rs. 50 for each such proceeding. In all other applications the fee allowed shall be Rs. 5 subject to increase by special order to a sum not exceeding Rs. 20.

(4) When a party engages more pleaders than one to conduct or defend a case, he shall be allowed one set of costs only.

(5) When several defendants having substantially one defence to make, employ several pleaders, they shall be allowed one set of costs only. In such cases, it will be for the applicant, at the time of hearing, to ask for a direction of the court that separate costs be not allowed.

(6) When two or more defendants having separate substantial defences have engaged the services of one pleader, they shall be allowed separate sets of costs. In this case, it will be for the defendants interested to apply at the hearing for separate costs.

(7) When several defendants having separate defences are represented by separate pleaders, they shall be entitled to separate costs.

---

*Notification of Industries Department No. 1333-XVIII-436 of 27th June 1924.

Scale of Fees

1. The following fees shall be payable in respect of proceedings under the Act:—

I. Application for compensation—	
(*a*) Where compensation is claimed in the form of recurring payments	Eight annas.
(*b*) Where compensation is claimed in the form of a lump sum	One rupee where the sum does not exceed Rs. 500 *plus* one rupee for each additional sum of Rs. 500 or fraction thereof.
II. Applications for commutation—	
(*a*) By agreement between the parties	Eight annas.
(*b*) In all other cases ..	Two rupees.
III. Applications for the deposit of compensation—	
(*a*) Under section 8 (*1*) of the Act	Nil.
(*b*) Under section 8 (*2*) of the Act (in respect of each person to whom compensation is payable)	Eight annas.
IV. Applications for distribution by dependants for each dependant	One rupee.
V. Application for review—	
(*a*) Where the review claimed is the continuance, increase, decrease or ending of half-monthly payments ..	Eight annas.
(*b*) Where the half-monthly payments are sought to be converted into a lump sum ..	Two rupees.
(*c*) In all other cases ..	One rupee.
VI. Applications for the registration of agreements—	
(*a*) Where the application or the memorandum of agreement is signed by both parties ..	Nil.
(*b*) In all other cases ..	Eight annas,

VII.	Applications to summon witness—	
	(*a*) For the first witness mentioned in the application	.. Eight annas.
	(*b*) For every subsequent witness	.. Four annas.
VIII.	Applications for indemnification	.. Three rupees.
IX.	Applications for the recovery of compensation—	
	(*a*) Under an order already passed by the Commissioner	.. Eight annas.
	(*b*) In all other cases	.. The same fee as payable on a similar application for compensation.
X.	All applications not otherwise provided for	.. Eight annas.

2. In the case of any application falling under head X the Commissioner may, if he thinks fit, permit the application to be made without fee.

3. If in any case the Commissioner considers that he ought to pass orders granting relief of a different kind or to a different extent from that claimed by the applicant, and if the fee which would have been payable by the applicant on an application for the relief which the Commissioner considers to be due is greater than the fee which has actually been paid, the Commissioner may require the applicant to deposit fees to the extent of the difference.

*Statements regarding fatal accidents**

(1) The notice sent by a Commissioner under sub-section (1) of section 10 A of the Act shall be in Form X and shall be accompanied by a copy of Form Y.

(2) The statement submitted by an employer under section 10 A shall be in Form Y.

FORM X.

Whereas I have received information that [1]_____a workman employed by you in[2]_____has died as the result of an accident arising out of and in the course of employment, I hereby require you in accordance with section 10 A of the Workmen's Compensation Act, 1928, to submit to me within 30 days of the receipt of this notice the enclosed form with the particulars required in paragraphs 1 and 2 and the particulars required in *either* paragraph 3 *or* paragraph 4 duly filled in. In the event of your admitting liability to pay compensation, the necessary deposit must, under section 10 A (2) of the Act, be made within 30 days of the receipt of this notice.

_____*Commissioner for Workmen's Compensation.*

*Notification of Industries Department No. 928/XVIII-436 of 9th May 1934.

(1) Insert name of workman. (2) Insert name of establishment.

FORM Y.

1. In reply to your notice dated the————19——which was received by me on the————19———it is submitted that[1]————residing at————————a workman $\frac{\text{over}}{\text{under}}$ 15 years of age employed in [2]————met with an accident on the————19——as a result of which he died on the————19 . The monthly wages of the deceased amounted to Rs.————.

2. The circumstances in which the deceased met his death were as follows————

One of these paragraphs to be struck out.

3. I admit liability to pay as compensation on account of the deceased's death, the amount of Rs.————which $\frac{\text{was}}{\text{will be}}$ deposited with you $\frac{\text{on}}{\text{before}}$ the————19 .

4. I disclaim liability to pay compensation on account of the deceased's death on the following grounds:————

————*Employer.*

(1) Insert name of workman. (2) Insert name of establishments.

*Notice Books.**

Notice books under sub-section (3) of section 10 shall be maintained, in the form appended hereto, in all factories wherein, or within the precincts of which, on any one day in the year more than 250 persons are simultaneously employed:

(Form of Notice Book required to be maintained under section 10 (3) of the Workmen's Compensation Act, 1923.)

Date of accident and time if known.	Name of person injured.	Address of person injured.	Cause of injury.	Date and time of notice.	Thumb-impression or signature of person giving notice.

*Notification of Industries Department No. 928/II/XVIII-436 of 9th May 1934.

BURMA RULES

COSTS AND FEES.*

Scales of Costs which may be allowed in Proceedings under the Act.

1. The costs which may be awarded shall include—

(*a*) the charges necessarily incurred on account of court-fees;

(*b*) the charges necessarily incurred on subsistence money and travelling allowance to witnesses, which should not exceed the amounts laid down in the rules governing the payment of expenses to witnesses in civil suits; and

(*c*) pleader's fees on the following scale:—

(1) In any proceedings involving an application for compensation in the form of a lump sum, an application for commutation or an application for indemnification, the fee allowed shall be Rs. 10, if the proceeding be not contested, and Rs. 34 if it be contested, subject by special order of the Commissioner to diminution to Rs. 5 and Rs. 17, respectively, and to an increase, if the proceeding be contested, to a sum not exceeding Rs. 85, for each such proceeding.

(2) In all other applications the fee allowed shall be Rs. 5 subject to increase by special order to a sum not exceeding Rs. 20.

2. When a party engages more pleaders than one to conduct or defend a case, he shall be allowed one set of costs only.

3. When several defendants having substantially one defence to make employ several pleaders, they shall be allowed one set of costs only. In such cases it will be for the applicant, at the time of hearing, to ask for a direction of the Court that separate costs be not allowed.

4. When two or more defendants having separate substantial defences have engaged the services of one pleader, they shall be allowed separate sets of costs. In this case it will be for the defendants interested to apply at the hearing for separate costs.

*Burma Government (Miscellaneous Department) Notifications No. 49, dated 23rd July 1924 and No. 11, dated 16th March 1933.

5. When several defendants having separate defences are represented by separate pleaders, they shall be entitled to separate costs.

6. Where the Commissioner directs that any costs shall not follow the event, he shall state his reasons in writing.

Scale of Fees payable in respect of Proceedings before a Commissioner.

7. (1) Applications for compensation :—

(*a*) Where compensation is claimed in the form of recurring payments—Eight annas.

(*b*) Where compensation is claimed in the form of a lump sum—One rupee where the sum does not exceed Rs. 500 *plus* one rupee for each additional sum of Rs. 500 or fraction thereof.

(2) Applications for commutation :—

(*a*) By agreement between the parties—Eight annas.

(*b*) In all other cases—Two rupees.

(3) Applications for the deposit of compensation :—

(*a*) Under section 8 (1) of the Act—Nil

(*b*) Under section 8 (2) of the Act (in respect of each person to whom compensation is payable)—Eight annas.

(4) Applications for distribution by dependants, for each dependant—One rupee.

(5) Applications for review :—

(*a*) Where the review claimed is the continuance, increase, decrease or ending of half-monthly payments—Eight annas.

(*b*) Where the half-monthly payments are sought to be converted into a lump sum—Two rupees.

(*c*) In all other cases—One rupee.

(6) Applications for the registration of agreements :—

(*a*) Where both parties are present, when the application is presented—Nil.

(*b*) Where only one party is present—Eight annas.

(*c*) Where neither party is present—One rupee.

(7) Applications to summon witness :—

(*a*) For the first witness mentioned in the application—Eight annas.

(*b*) For every subsequent witness—Four annas: Provided that, when processes are issued simultaneously to two or more persons residing in the same town or village, only half fees shall be charged for each such process.

The fees shall be paid in advance and shall, subject to the discretion of the Commissioner, be costs in the case.

(8) Applications for indemnification—Three rupees.

(9) Applications for the recovery of compensation:—

(*a*) Under an order already passed by the Commissioner—Eight annas.

(*b*) In all other cases—The same fee as if payable on a similar application for compensation.

(10) All applications not otherwise provided for—Eight annas.

8. In the case of any application falling under sub-head (10) of rule 7, the Commissioner may, if he thinks fit, permit the application to be made without fee.

9. If in any case the Commissioner considers that he ought to pass orders granting relief of a different kind or to a different extent from that claimed by the applicant, and if the fee which would have been payable by the applicant on an application for the relief which the Commissioner considers to be due is greater than the fee which has actually been paid, the Commissioner may require the applicant to deposit fees to the extent of the difference.

Registers.

[Rules for the maintenance of registers by Commissioners were promulgated in Miscellaneous Department Notification No. 46, dated 23rd May 1925. They are not reproduced here.]

*Statements regarding Fatal Accidents.**

1. The notice sent by a Commissioner under sub-section (*1*) of section 10A of the Act shall be in Form X and shall be accompanied by a copy of Form Y.

2. The statement submitted by an employer under section 10A shall be in Form Y.

*Miscellaneous Department Notification No. 12 of 14th March 1934. The forms are similar to those in the United Provinces (pages 274-5).

CASES CITED

Privy Councils.

(New Zealand case.)

British Courts.

Indian Courts.

INDEX.

The numbers refer to the paragraphs of the commentary except where otherwise stated.

C

D

G.

H.

I.

J.

L.

M.

N.

O.

P.

Q.

R.

S.

T.

U.

V.

W.